No. 19-359

IN THE SUPREME COURT OF THE UNITED STATES

THE LAW OFFICES OF NINA RINGGOLD
AND ALL CURRENT CLIENTS THEREOF
on their own behalves and all similarly
situated persons,
***Petitioners*,**

_____◆_____

On Petition For Writ Of Mandamus To The
United States Court Of Appeals For The Ninth Circuit And To A Lower
Court Judge Acting As A Single-Judge District Court

_____◆_____

VOLUME 3
APPENDIX TO EMERGENCY APPLICATION FOR STAY AND INJUNCTION PENDING DISPOSITION OF PETITION FOR WRIT OF MANDAMUS; PENDING FILING AND DISPOSITION OF RELATED PETITIONS FOR WRIT OF CERTIORARI; AND FOR ISSUANCE OF A CERTIFICATE OF NECESSITY BY THE CIRCUIT JUSTICE

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APPENDIX 27

559th Cir. Civ. Case No. _____
USDC Case No. CV11-01725 R (PLA)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUSTIN RINGGOLD-LOCKHART; NINA RINGGOLD ***in the capacity as named trustee of the Aubry Family Trust, in the capacity as named executor of the estate of Robert Aubry, and in the capacity*** **as** ***counsel for Justin Ringgold-Lockhart, ASAP Copy and Print, Ali Tazhibi, Nazie Azam, Nathalee Evans, Cornelius Turner, Greta Curtis, and Karim Shabazz***

Petitioners,

v.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

COUNTY OF LOS ANGELES et al.,

Real Parties In Interest.

From the United States District Court for the Central District
The Honorable Manuel Real

PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS, AND FOR STAY OF ORDER ENTERED ON JANUARY 8, 2015, AND FOR OTHER APPROPRIATE RELIEF; PETITION TO RECALL MANDATE AS TO APPEALS IN DISTRICT COURT CASE NO. CV11-01725 R (PLA); AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

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INTRODUCTION

Petitioners file this writ petition following an order signed on December 17, 2014 and entered on December 23, 2014 ("December 23, 2014 order"), and then amended and entered on January 8, 2015 ("January 8, 2015 order"). (BS 23-45).[1] Petitioner Justin Ringgold-Lockhart ("Lockhart") is an heir of Mary Louise Aubry and a member of the youngest class of beneficiaries of the Aubry Family Trust. (BS 1443 ¶3, 1458 ¶25). Petitioner Nina Ringgold ("Ringgold") is a named trustee of the Aubry Family Trust identified in the trust instrument of said trust. (BS 1601).[2] Both are African American. No petition to remove petitioner Ringgold as trustee has ever been filed in any court.

Under the will of Robert Aubry, Ringgold is a named executor and named testamentary trustee of the Aubry Family Trust. (BS 130 ¶3).

Ringgold through her law office is the attorney for clients Justin Ringgold-Lockhart, ASAP Copy and Print, Ali Tazhibi, Nazie Azam, Nathalee Evans, Cornelius Turner, Greta Curtis, and Karim Shabazz, and the attorney for Ringgold in the capacity as named trustee of the Aubry Family inter vivos and testamentary trusts and as named executor in the will of Robert Aubry.

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[1] Citation method: Appendix to petition ("BS") and bates stamp nos.

[2] Although no court confirmation of a trustee of a private trust is required, petitioner Ringgold was confirmed as trustee by final and unchallenged orders dated October 4, 2003 which is now res judicata. (BS 130 ¶3, 132-133 ¶7, 175-176, 363-364, 1606, 1616-21).

The January 8, 2015 order of Judge Manuel Real demonstrates a flagrant refusal to comply with the August 27, 2014 mandate of this court. (BS 69-89). He has refused to comply with the actual terms, intent, and spirit of this court's mandate. The mandate expressly required Judge Manuel Real to conduct further proceedings which included the petitioners. No notice was provided and no further proceedings were conducted. Petitioners were completely denied notice and an opportunity to be heard. Such opportunity was critical, because as shown herein, during the prior appeal various events and circumstances occurred demonstrating that Judge Real had used non-existent or extrajudicial sources of information and demonstrated pervasive and extraordinary bias in the two cases cited in the January 8, 2015 order warranting disqualification. (BS 164-166, 346-349, 379-380, 1381-1397). By refusing to conduct further proceedings Judge Real demonstrated that his intent was to preclude directly relevant evidence concerning the January 8, 2015 order and this impairs the adequacy of the record on review of the order.

The refusal to conduct a proceeding as directed by this court, in part, was intended to prevent petitioners from presenting evidence of the California Legislature's enactment of Senate Bill 731 which

was effective January 1, 2012 and after the prior appeal was filed.[3] Senate Bill 731 confirms there was absolutely no jurisdiction for a "justice" of the state appellate court to enter the vexatious litigant order pertaining Ringgold in the state court. The void state court order has been erroneously used to cause prejudice to clients of the law office, including those who have no relationship or interest in matters pertaining to the Aubry Family Trust. As to each client no motion has ever been filed in the state trial court to make a pre-filing order or to deem them to be "vexatious" by association. California Senate Bill 731 also confirms that in 2009 the California vexatious litigant statute never allowed any "justice" of the state appellate court to enter a pre-filing order against a person who is not "in propria persona". (See BS 610-614.8). At no point in time, even post January 1, 2012, has the California vexatious litigant statute allowed a determination of vexatious litigant status to be made in the first instance in a state appellate court without a right of review, never applied to persons represented by counsel, never applied to fiduciaries required to be represented by counsel[4], never applied to persons not initiating new litigation, never applied to persons who are defendants in the trial court, and never applied to persons merely based

[3] See notices of appeal filed on December 27, 2011 (USDC 11-cv-01725, Dkt 126)(Appeal No. 11-57231) and filed on November 8, 2011 (USDC 11-cv-01725, Dkt 105)(Appeal No. 11-56973).

[4] See BS 516-519 ¶¶43-51, 625-627, 917 ¶28, (admission the pleadings by Jerry Brown and Kamala Harris), 1095-1100).

on their associational interests protected under the First Amendment. See N.A.A.C.P. v. Button, 371 U.S. 415 (1963). Nevertheless, the statute was applied to clients, all racial and language minorities, who were involved in or associated with the a case seeking a monitored special judicial election under the Voting Rights Act of 1965 as amended (42 U.S.C. § 1973 et. seq.),[5] due to their grievances, and due to their view that uncodified section 5 of California Senate Bill x211 ("section 5 of SBX2 11") was unconstitutional.

Petitioners also request that this court recall its March 12, 2014 mandate on the January 10, 2014 memorandum arising from the same case. (BS 731-740).[6] The memorandum is inconsistent with the Supreme Court's November 10, 2014 decision in Johnson v. City of Shelby, Miss., 135 S. Ct. 346 (2014) which held that it is improper to require plaintiffs to punctiliously plead claims under 42 U.S.C. § 1983 and to not freely allow leave to amend. Id. at 347. (BS 65-68). Not only is the January 10, 2014 memorandum inconsistent with the decision of the Supreme Court, it has been prejudicially and repeatedly used and cited in the cases of others in the VRA case. This violates Circuit Rule 36-3. These persons were not

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[5] *Law Offices of Nina Ringgold and All Current Clients Thereof v. Jerry Brown et a*l, (USDC (Eastern District) Case No. 12-cv-00717). (BS 493-609). Second Amended Complaint). ("VRA Case").

[6] See (BS 731-740). *Ringgold-Lockhart v. County of Los Angeles* ,Appeal No. 11-56973 (USDC Case No. 11-cv-01725). Copy of the mandate is located at Appeal No. 11-56973, Dkt 92.

parties in these proceedings. The information publically available has evolved. (See Ninth Circuit Rule 36-3, BS 90-91).

STATEMENT OF RELIEF SOUGHT

Petitioners seek the following relief:

(1) Pending determination of this writ petition:

a. That this court stay the January 8, 2015 order;

b. That this court stay the proceedings (whether in the state or federal court) that have been adversely impacted by the use of the December 6, 2011 order of Judge Real which was reversed by this court by its August 4, 2014 decision in Ringgold-Lockhart *supra*.

c. That this Court stay the proceedings where the pre-filing order entered in the state appellate court in the case of the Aubry Family Trust against petitioner Ringgold has been used against clients of her law office when they have no interest in the Aubry Family Trust[7];

(2) Upon disposition of this writ petition, petitioners request:

a. Vacate. That this court vacate the order entered on January 8, 2015 because (i) it is not in conformity with the actual terms, intention, or spirit of the August 27, 2014 mandate of this court; (ii) due to the persistent and pervasive bias, retaliatory conduct, and use of non-existent or extrajudicial sources of information, and the refusal to comply with the requirement of further proceedings as directed by this court; and (iii) due to the overwhelming prejudice caused to petitioners, clients

[7] See Affidavit ("Aff") Exhibit 5.

of the law office, and all persons and entities associated with the VRA Case.

b. Recall Mandate. That this court recall and amend the mandate arising from appeals in proceedings conducted by Judge Real in USDC Case No. 11-cv-01725 R (PLAx) (Appeals Nos. Appeal No. 11-56973 &11-57231). As to both appeals the proceedings can be shown to have been infected with bias from inception based on the judge's use of non-existent or extrajudicial information and then based on blatant retaliation when this fact was at risk of disclosure when petitions for civil rights removal were filed.

As to Appeal No. 11-56973 the mandate should also be recalled based on new evidence and because the January 10, 2014 decision conflicts with and is inconsistent with the recent decision of the United States Supreme Court in Johnson, v. City of Shelby *supra*.

Due to the refusal of Judge Real to conform to this court's mandate, the lack of any legal or factual showing of the basis for a pre-filing injunction based on filing two cases,[8] or a pattern of harassment, combined with the substantial prejudice to petitioners and others; this

[8] Case No. 09-cv-09215 was dismissed for lack of subject matter jurisdiction (See Clark v. Bear Stearns & Co., Inc., 966 F.2d 1318, 1321 (9th Cir. 1992), Cook v. Peter Kiewit Sons Co., 775 F.2d 1030, 1035 (9th Cir. 1985) (such dismissal is not an adjudication on the merits and has no res judicata effect). No final judgment has not been entered in Case No. 09-cv-09215 and the case is on appeal. (BS 942, 1310-1316)(USDC Case No. 09-cv-09215, Appeal No. 11-57247).

court should recall the mandate and modify its decision to determine that no pre-filing injunction was ever warranted or appropriate.

c. Intercircuit Assignment. Due to substantial bias and prejudice in the geographical area as to persons involved in or associated with the VRA case, petitioners request that the petition under 28 U.S.C. § 292 be forwarded to the designated statutory officer for determination of issuance of a certificate of necessity for an intercircuit assignment outside the State of California of the VRA case and cases of persons involved in or associated with the VRA case.

JURISDICTIONAL STATEMENT

The All Writs Act, 28 U.S.C. § 1651 (a), provides in pertinent part that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Additionally the All Writs Act provides jurisdiction to enforce a mandate of the Court of Appeals. See Vizcaino v. United States District Court for the Western District of Washington, 173 F.3d 713, 718 (9th Cir. 1999). The factors established under Bauman v. United States Dist. Ct., 557 F.2d 650, 654-55 (9th Cir. 1977) do not apply when mandamus is sought on the ground that the district court failed to follow the appellate court's mandate. Vizcaino at 719, See also Pit River Tribe v. United States Forest Service, 615 F.3d 1069, 1078-79 (9th Cir. 2010). Like Pit River Tribe this case meets the requirements of both Vizcaino and Bauman. This court

also has jurisdiction to issue a stay of state and federal proceedings. See Yonkers Racing Corporation v. City of Yonkers, 858 F.2d 855, 863 (2nd Cir. 1988)(The All Writs Act allows the court to issue orders as to persons and entities (although not parties to the original action) who are in a position to frustrate an ultimate order of the federal court or the proper administration of justice even if those persons have not taken any affirmative action to hinder justice).

The traditional office of the writ of mandamus is to "confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Will v. United States, 389 U.S. 90, 95 (1967). When a lower court obstructs the mandate of an appellate court, mandamus is the appropriate remedy. See United States v. United States Dist. Ct., 334 U.S. 258, 263-64 (1948). The basis for relief by mandamus in such circumstance is based on two grounds. First, an inferior court's disregard of appellate mandates "would severely jeopardize the supervisory role of the courts of appeals within the federal judicial system." In re Chambers Dev. Co., 148 .3d 214, 224 (3rd.Cir. 1998). Second, as a policy matter, litigants who have proceeded to judgment in higher courts should not be required to go through that entire process again. See General Atomic Co. v. Felter, 436 U.S. 493, 497 (1978).

Supervisory mandamus is proper when an adequate alternative means of review is unavailable, there is a showing of substantial harm to the public's interest which is not correctable on appeal, the district

court's order is clearly erroneous, or the matters present significant issues of first impression that may repeatedly evade review. See Perry v. Schwarzenegger, 591 F.3d 1147, 1154, 1159 (9th Cir. 2010), 28 U.S.C. § 1651 (a). It can be used to correct an established trial court practice that significantly distorts proper procedures. See United States v. Horn, 29 F.3d 754, 769 n. 19 (1st Cir. 1994). This form of mandamus is appropriate when "a question anent to the limits of judicial power, poses some special risk of irreparable harm to the appellant, and is palpably erroneous." Id. at 769; In re Cargill, Inc. 66 F.3d 1256, 1260 (1st Cir. 1995) (i.e. where petitioners can "show both that there is a clear entitlement to the relief requested and that irreparable harm will likely occur if the writ is withheld.").

Advisory mandamus is not directed at established practices but rather at issues that may be novel, of public importance, or likely to recur. As to advisory mandamus petitioner does not need to demonstrate irreparable harm or clear entitlement to relief. See In re Sony BMG Music Entertainment, 564 F.3d 1, 4 (1st Cir. 2009)("When advisory mandamus is in play, a demonstration of irreparable harm is unnecessary."); In re Atlantic Pipe Corp., 304 F.3d 135, 140 (1st Cir. 2002)(a systemically important issue which the court has not yet addressed.) .

In addition to mandamus jurisdiction, this court has jurisdiction under 28 U.S.C. §2106 to modify or vacate any order of a court lawfully brought to the court on review and to order further proceedings as may be just under the circumstance.

Although not conferred by statute, this court has jurisdiction and authority to recall its mandate "as part of the court's power to protect the integrity of its own processes." Zipfel v. Halliburton, 861 F.2d 565, 567 (9th Cir. 1988). It may be exercised for good cause, under unusual circumstances, or to prevent injustice. Id. It is also warranted when it such action promotes uniformity in judicial decision making and in the treatment of litigants or when the decision at issue departs from a decision or standard applied in a prior judgment of the Court of Appeals. Id.

Finally, as to the request for intercircuit assignment, the Chief judge of the Ninth Circuit is guided solely by the public interest in determining whether to submit a certificate of necessity to the Chief Justice. There is no need to conduct a poll of the circuit judges before issuing a certificate of need. See U.S. v. Clairborne, 870 F.2d 1463 (1989). 28 U.S.C. § 292 does not bar the parties or the public from acting as the source of information of the need for issuance of a certificate of necessity.

STATEMENT OF FACTS

A. Procedural Facts

On August 4, 2014 this court vacated the December 6, 2011 pre-filing order of Judge Real and remanded for *further proceedings* not inconsistent with its opinion. (Ringgold-Lockhart at 1067 "For these reasons, we vacate the pre-filing order and remand for *further proceedings* not inconsistent with this opinion"). The mandate of the court was received by the district court on August 27, 2014. (BS 69-89). Absolutely

no notice was provided to petitioners or any further proceedings. Petitioners were intentionally excluded from input as to the January 8, 2015 order. On December 23, 2014 an order was entered which did not contain a list of cases. On January 8, 2015 the order was amended to include a list of cases. (BS 23-45). On January 12, 2015 petitioners filed an ex parte application to stay the orders entered. (BS 6-22). On this same day petitioners filed an amended declaration demonstrating that there was no opposition to the request for stay. (BS 1-5). Judge Real has not filed an order on the uncontested application for stay.

B. The Distinction Between Private Inter Vivos Trusts And Administration Of Decedent Estates

The January 8, 2015 order focuses on the state court proceedings relating to the Aubry Family Trust without comprehension of the fundamental differences between private inter vivos trusts and administration of a decedent's estate.

The proceedings in the state court do not involve administration of a decedent's estate. Testamentary trusts only arise after a will is probated, a personal representative has been appointed, and constitutional notice is given to all known and reasonably ascertainable heirs. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

Unlike testamentary trusts which are created by will private inter vivos trusts are not subject to court supervision or continuing jurisdiction of the court. See Probate Code § 17300-17302.

Only a trustee or a beneficiary of a private inter vivos trust may file a petition concerning its internal affairs and this provides the basis for intermittent jurisdiction of the court on particular petitions. Probate Code § 17200. A court does not have jurisdiction to terminate a trust that is subject to a valid restraint on transfer of a beneficiaries' interest as in the case of the Aubry Family Trust. Probate Code § 15403. (BS 1585).

The procedure to determine distribution rights under Probate Code § 11700-11705 only involves proceedings to administer a decedent's estate and such procedure can only commence *after* a will is probated, letters are first issued to a general personal representative and the court has obtained subject matter jurisdiction through publication of notice. Such petition can only be filed by a personal representative, or person claiming to be a heir or beneficiary entitled to a distribution. (BS 290-291). There are statutory limits applicable for fees allowed in proceedings to administer a decedent's estate. Both testamentary trustees and personal representatives issued letters are required to provide bond. Order of a court appointing a trustee (not named in the trust instrument) without bond are void. (BS 288, 289, 292). See Texas Co. v. Bank of America Nat. Trust & Savings, 5 Cal.2d 35, 40-41 (Cal 1935); Pryor v. Downey, 50 Cal. 388 (Cal. 1875). Obtaining a bond later does not act as a cure. See Lamkin v. Vierra, 198 Cal.App.2d 123, 126-128 (Cal. 1961). In the state court Myer Sankary ("Sankary") was appointed through a non-appealable order and without bond without a petition to remove the actual trustees.

Sankary, in propria persona and without bond, filed a petition under Probate Code Section 11700 as if the case involved a proceeding to administer a decedent's estate. He claimed that he needed to sell unencumbered and income producing real property and to determine distribution rights. This petition and all of the reoccurring petitions initiated by Sankary are operating without subject matter jurisdiction. Sankary had not filed a petition to administer a decedent's estate and he had not filed a the mandatory publication of notice for the court to obtain subject matter jurisdiction or in rem jurisdiction for a Probate Code §11700 petition. See Estate of Buckley, 132 Cal.App.3d 434 (Cal. 1982). (See BS 342-345). The African American heirs, actual trustees, and successor trustees named in the trust instrument must defensively file repeated objections because the failure to do so could result in a statutory waiver. (See Probate Code Section 16461, BS 298-300).

The de facto administration of decedent estate procedures used in the state court, which are without subject matter jurisdiction, divest substantial numbers of African Americans of property and the right to inherit. The fees generated fund impermissible public employment of judges of the courts of record and generate substantial fees to the Office of the Public guardian of the County of Los Angeles. At the same time, the proceedings without subject matter jurisdiction generate fees to White probate insiders which exceed the statutory limit allowed by law (if the case had actually been a proceeding to administer a decedent's estate). (See BS 289). Since a proceeding to administer a decedent's

estate does not really exist, a final decree of distribution will never exist.[9] What exists is perpetual liquidation of the assets of a private trust of the African American family, a taking of property without subject matter or rem jurisdiction, and without constitutional notice to all ascertainable and known heirs. Since the families' financial resources are in the control of persons operating in a complete absence of jurisdiction there is little ability to stop the discriminatory practice.

Most of the state court proceedings relating to the Aubry Family Trust identified in the January 8, 2015 order arise from proceedings that were not initiated by the petitioners, yet they are "purportedly" being "vexatious." (See Aff. Exhibit 2-3).

C. Basic Facts Pertaining To Judge Real's Refusal To Comply With The Mandate In Appeal No. 11-57231 *Ringgold-Lockhart et al v. County of Los Angeles et al*

The August 4, 2014 decision of this court focused on the fact that restriction of access to the court was a serious matter and that the United States Supreme Court located such right of access in the Privileges and Immunities clause, the First Amendment petition clause, the Fifth Amendment due process clause, and the Fourteenth Amendment equal protection clause. Ringgold-Lockhart at 1061. "Out of regard for the constitutional underpinnings of the right to court access, 'Pre-filing orders should rarely be filed,' and only if courts comply with certain procedural and substantive requirements". Id. at 1062. Judge Real was

[9] See BS 1432-1433.

to follow the standards of De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990). This court directed that in determining whether a party is a vexatious litigant and whether a pre-filing order is warranted or sanctions are adequate that the five factors in the Second Circuit's decision in Safir v. U.S. Lines, Inc., 792 F.2d 19, 24 (2nd Cir. 1986) should be employed. Id. The court noted that whether other remedies were adequate to protect other persons including those with a cognizable interest. Id. 1062-1063 & fn 2.

This court directed Judge Real to look at both the number and content of the filings in determining frivolousness. Alternatively, the court indicated that the court could determine if the filings showed a pattern of harassment, but noted that in filing similar actions the court must discern if there was an intent to harass. Id. at 1064. Finally, the court directed that Judge Real should consider whether less restrictive options were adequate. Id.

The January 8, 2015 order states that petitioners filed "sixteen baseless motions." (BS 28:10). In *Ringgold-Lockhart et al. v. Sankary et al.* (09-cv-09215) petitioners filed three ex parte applications and two motions. None were frivolous or brought for the intent to harass. (See Aff Ex 1). In *Ringgold-Lockhart et al v. County of Los Angeles et al* (11-cv-01725) petitioners filed two ex parte applications and two motions. None were frivolous or brought for the intent to harass. Judge Real in direct contradiction to the court's mandate continued to include requests for disability accommodation in the list of cases. (Id.).

This court noted that Judge Real "found the Ringgolds vexatious primarily on the basis of the current case and an earlier federal case" and "motion practice" in the two cases. Id. at 1064-1065. This court noted that whether motion practice in two cases could justify imposing a pre-filing order would be extremely unusual in light of other alternative remedies. Id. at 1065.

Judge Real disregarded the court's mandate and erroneously and falsely inflated the number of motions and failed to conduct a proceeding in which petitioners could raise the issues relevant to the proceedings.

This court held that "it was also error to issue an order against Ringgold-Lockhart on the basis of state litigation in which he played no part." Id. at 1066.

Petitioners filed a verified constitutional rights violation petition (in part asserting federal claims) on October 12, 2007. The petition was dismissed without prejudice and petitioner Lockhart was deemed not to be a party with standing. (BS 1474-1476). The petition was re-filed in the federal court and became Case 09-cv-09215. The references in the January 8, 2015 order are improper because Judge Real barred Lockhart's participation and ability to submit evidence. Lockhart's attempts to gain standing to gain access to his property were not frivolous. (Aff. Exhibit 2 items 1, 3, 4). Lockhart attempted to appeal the order indicating he did not have standing. The entire concept of standing raised by the appellate court was based on treatment of Sankary's Probate Code Section 11700 petition and the December 16, 2005 distribution order as a decree of

distribution in a proceeding to administer a decedent's estate.[10] This custom or practice itself is in conflict with 42 U.S.C. §1982. None of the decisions of the state court deal with or address the issue of subject matter or in rem jurisdiction or lack of notice to Lockhart. See Pioneer Land Co. v. Maddux, 109 Cal. 633, 642 (Cal. 1895)("The affirmance of a void judgment upon appeal imparts no validity to the judgment, but is in itself void by reason of the nullity of the judgment appealed from").[11]

In Case No. 09-cv-09215 Judge Real improperly and falsely specified that Lockhart was determined not to have standing because he was found not to be an heir. Therefore, with Judge Real indicating a lack of federal subject matter jurisdiction in Case No. 09-09215 and the state court already dismissing without prejudice the federal claims of the named trustee in the trust instrument; Lockhart, a known heir with a direct pecuniary interest specified in the trust instrument had to file a motion to vacate (as if a stranger to the trust) in order to attempt to

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[10] "Plaintiff has no interest in the trust under the December 16, 2005 distribution order. That order supersedes the trust provisions and is the conclusive determination of the trust's validity, meaning, and effect. (*Estate of Callnon* (1969) 70 Cal .2d 150, 156; *Keating v. Smith* (1908) 154 Cal. 186, 191; *Meyer v. Meyer* (2008) 162 Cal.App.4th 983, 992; *Estate of Russell* (1971) 17 Cal.App.3d 758, 764-765.)" *Ringgold-Lockhart v. Sankary*, 2009 WL 3431443 (Oct. 27, 2009, B212797 at *3).

[11] See also Plaza Hollister Ltd. Partnership v. County of San Benito, 72 Cal.App.4th 1, 13-22 (Cal. 1999); Airlines Reporting Corp. v. Renda, 177 Cal.App.4th 14,19-23 (Cal. 2009).

obtain standing and access to the proceedings and his inheritance. (Aff Ex item 4). And, as discussed below, once this motion to vacate was filed in the state court during Appeal No. 11-57231, squarely placing the state court's jurisdiction at issue, it was Judge Real's December 6, 2011 vexatious litigant order which then functioned to bar Lockhart's access to the state court and the proceedings in the state court.

This court found the scope of the December 6, 2011 order was overbroad and could "extend to factual scenarios entirely unrelated to the dispute relating to the Trust". Id. at 1066-1067. This overbreath is evident by the fact that the December 6, 2011 and January 8, 2015 order is being used to prevent all clients of the law office from obtaining timely and common injunctive relief in the VRA Case. (See BS 493-580). The January 8, 2015 order is just as overbroad and is not warranted because there is no support for any vexatious litigant determination.

This court in Ringgold-Lockhart held:

> "…[T]the district court relied in large part on the Ringgolds' motions practice over the course of just two federal lawsuits, without considering less restrictive sanctions. In light of the constitutional concerns such pre-filing orders implicate, we hold this was error. The district court also erred by holding Ringgold's state litigation against Ringgold-Lockhart, without a record indicating that he participated in that litigation. Finally, there is an insufficiently close fit between the terms of the injunction and the problem it purports to address. For these reasons, we vacate the pre-filing order and remand for further proceedings not inconsistent with this opinion." Id. at 1067.

The January 8, 2015 order disregards the mandate of this court.

D. The 2007 Constitutional Rights Violation Petition Leading To The Inevitable Discoveries Of The Unconstitutional Condition In the County of Los Angeles and Other Counties

When petitioners filed the October 2007 constitutional rights violation petition in the state court they had no idea their petition was in conflict with administrative activities of the California Judicial Council probate task force, that both the judge in the trial court and justice in the appellate court were members of the probate task force, or that there had been widespread grievances in the probate department of the County of Los Angeles.[12] The reported grievances[13] did not encompass many of the substantial grievances of language and racial minorities. They did not include the pervasive and systemic methods discrimination, including but not limited to, the creation of de facto administration of estate procedures causing wholesale divestment of property without subject matter or in rem jurisdiction. The necessary records were unavailable to the public to reveal that the graduated filing fees in the probate department were being used to fund impermissible public employment and office of the judges of the courts of record. (See Cal. Govt. Code § 68106.2 (g) (adopted 7/28/09), Cal. Rules of Ct., Rule 10.500 (adopted 1/1/10)). Although the case of In re Claeyssens, 161 Cal.App.4th 465 (2008)

[12] See BS 395-396; 402-404; 516 ¶42-43; 544 ¶14;, 951-2; 972; 977-978; 994-1000.

[13] See BS 978-979, 1001-1056.

has determined the graduated fees to be unconstitutional, it is evident by review of the case that there was more at issue than an unconstitutional and disguised tax.[14]

E. The California Legislature's Enactment Of Senate Bill 731 Effective January 1, 2012 After The Notice Of Appeal Was Filed On November 8, 2011 In Appeal No. 11-56973 And After The Notice Of Appeal Was Filed On December 27, 2011 In Appeal No. 11-57231

The California Legislature resolved two important issues which related to the challenges which petitioners had raised concerning the California Vexatious Litigant Statute in Case No. 09-cv-09215 and 11-cv-01725. It confirmed, as claimed by petitioners and the VRA Case, that a state court justice prior to January 1, 2012 could not enter a prefiling order in the first instance in the court of appeal. To the present date, a justice under CCP § 391.7 (a) does not allow an initial vexatious litigant determination to be made in the court of appeal by a justice in the first instance. (See BS 610-614.13). The California Legislature also rejected a proposed change in the law which would have included persons who are

[14] After the 2007 constitutional rights violation petition was filed and on the eve of publication of the probate task force's first report, the court in Claeyssens directed the County of Santa Barbara to file a response in the appeal. This county was objecting to participation because it claimed it had "no interest" in the case. This county does not employ judges as county employees and officials and had to be cajoled into participation. (See BS 1645.1-1645.15). The same counsel representing the Judicial Council and Justice Boren and Justice Turner in Case 09-cv-09215 represented the respondent in In re Claeyssens. (BS 1382-1385, 1400, 1645.7).

attorneys or represented by attorneys. (Senate Bill 603, BS 625-627). The January 8, 2015 order does not take into account that recent legislation supports the petitioners' position. Judge Real avoided evidence of this fact, by not allowing petitioners to participate in the proceedings as directed by this court.

The order to show cause issued to petitioner Ringgold in the state appellate court in 2009 provided no notice of the cases alleged to be at issue. More importantly, the order to show cause erroneously was written as if an original proceeding with the Superior Court of the County of Los Angeles as the respondent had been filed. (See Appeal No. 11-57247, Dkt 55 BS 393-394). Such a proceeding did not exist and no motion had been filed in the trial court. The January 8, 2015 order states: "…[I]t should be noted that Plaintiff Ringgold was deemed a vexatious litigant by the Superior Court of Los Angeles, a ruling that was affirmed by the Court of Appeal…." (BS 28 ¶ 3). There was no ruling made in the Superior Court that Ringgold was a vexatious litigant.

The 2009 order to show in the non-existent original proceeding in the state court of appeal was completely unrelated and did not involve an issue in the notice of appeal that had been filed by Ringgold solely in her capacity as trustee and attorney for the trustee. (BS 974, 979-80, 1057-1060). The order to show cause required Ringgold to "disprove" she was not a vexatious litigant with no list of cases. (See Appeal No. 11-57247 Dkt No. 55 BS 393-394). Then a decision was rendered on a statutory provision not mentioned in the order to show cause and based on

hearsay and erroneous information which could never be contested and there was no procedure to allow a response. (See Appeal No. 11-57247, Dkt 55 BS 393-428, 430-438). Although the law is clear that the California Vexatious Litigant state does not apply to attorneys and persons or entities represented by attorneys, it has been applied in a discriminatory manner to petitioners and others (by association). (i.e. BS 379-80, 515-522, 532 ¶106h, 1095-1106). There was not a regular application of the statute and the method was intended to penalize petitioners and others because of the grievances lodged, the filing of the 2007 verified constitutional rights violation petition, and because of their objections to section 5 of SBX2 11. (See Aff. Exhibit 2 item2).

F. Orchestrating A Predetermined Outcome In The Two Cases Cited In The January 8, 2015 Order: Case No. 09-Cv-09215 And No. Case 11-Cv-01725

The January 8, 2015 order does not identify any complaint or particular motion that was frivolous or intended to harass in the two cases identified: Case Nos. 09-cv-09215 and 11-cv-01725. (See Aff Ex 1). Case 09-cv-09215 was dismissed for lack of subject matter jurisdiction which is not an adjudication of the merits. The dismissals were based on the Rooker-Feldman doctrine although no state court judgment existed or presently exists in the state court and petitioner Lockhart was never a party. (BS 1416, 1432-1435). In Case No. 11-cv-01725, on the vexatious litigant issue, Judge Real entered a sua sponte dismissal after an answer was filed by defendants Jerry Brown and Kamala Harris admitting an

essential issue in the challenge to the state statute on its face and as applied. (e.g. that a named trustee had to appear in a legal proceeding through an attorney). (BS 917, 927-930).

Although no one in Case 09-cv-09215 argued or asserted that petitioner Lockhart was not an heir, through non-existent and certainly extrajudicial sources of information, Judge Real determined that the state court had determined he was not an heir. (BS 1414). Defendants submitted orders based on this determination, knowing the indication of Judge Real was false. (942-945, 1381-1397).[15] In Case No. 09-cv-09215 Judge Real also erroneously indicated that petitioners were attempting to overturn the state court vexatious litigant order, disregarding the actual allegations in the complaint that petitioners were seeking prospective declaratory and injunctive relief. (See BS 1456 ¶ 23:6-12 "Plaintiffs seek declaratory and injunctive relief to prohibit prospective enforcement of California Code of Civil Procedure § 391.7 which is unconstitutional and prohibits plaintiffs from effectively protecting their federal constitutional rights. including but not limited to, their right to property of the Aubry Family Trust."). [16]

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[15] In Appeal No. 13-55063 Sankary admitted that there was no such finding in the state court. (BS 379-380).

[16] The issue of whether California Constitution Art. VI § 17 and § 21 required disclosure and consent by court users is not alleged in the complaint in Case No. 09-cv-09215. (BS 1440-1463).

According to Judge Real's dismissal orders in Case No. 09-09215, the federal court lacked subject matter jurisdiction to hear the federal constitutional claims of the named trustee that the state court had already dismissed without prejudice *and* the state court had determined that petitioner Lockhart lacked standing as a party. Therefore, to gain standing as an alleged nonparty, Lockhart filed a motion to vacate the orders obtained in the state court proceedings initiated by Sankary without publication of notice or constitutional Lockhart and in through Sankary's petitions without subject matter jurisdiction.

Initially, the state court barred petitioner Lockhart from filing the motions to vacate based on a false an indication by Sankary that Lockhart had been deemed a vexatious litigant. (BS 1095-1106). After determining this was in fact not the truth, and that Lockhart was also represented by counsel, Lockhart was granted leave to proceed. However, the probate department disregarded the order of the supervising judge of the court and refused to place the motion on calendar. Judge Real then entered the December 6, 2011 order in Case No. 11-cv-01725 imposing a pre-filing order when Lockhart had never filed any case in propria persona in his lifetime. During the prior appeal, the December 6, 2011 order was used in the first instance in the state appellate court to bar review of the procedures barring hearing on the motions to vacate the orders obtained by Sankary without subject matter jurisdiction or proper bond. The appeal of Lockhart was barred by the very same defendant justices in Case No. 09-cv-09215 who had an direct financial interest and were

engaged in pending litigation with Lockhart since 2009. Also, this disregarded the order of the supervising judge of the state trial court which determined that Lockhart could proceed with his motion to vacate.[17] To the present date the California Vexatious Litigant Statute does not allow an initial vexatious litigant determination to be made in the first instance in the court of appeal.

G. Confronting Irrefutable Evidence Of The Use Of Extrajudicial Or Non-Existent Sources of Information In Case No. 09-09215 On Civil Rights Removal Case Nos. 13-55063

After the supervising judge of the state trial court unlocked the "artificial legal jail" of Lockhart by granting permission for Lockhart to file a motion to vacate in the proceedings formed by Sankary's reoccurring petitions, the probate department then created an administrative block by refusing to place the matter on calendar.[18] Meanwhile Sankary filed petitions which would terminate the entirety of Lockhart's interest in the trust without bond and to have the trust pay for the legal defense in Case No. 09-cv-09215 of Sankary, a surety company, his two attorneys, and for an indirect defense of his co-defendants (which included defendants Justice Boren, Justice Turner). Although a

[17] See BS 614.9-614.20.

[18] Like other clients of the law office, although Lockhart had never been determined to be a vexatious litigant, his filings were held in abeyance while adverse litigation persisted harming his interests. (See 1096-1100, 1105-1106).

defendant in Case No. 09-cv-09215 and actively submitting briefs in the Ninth Circuit, refusing to recuse himself Justice Turner entered an order to show cause to dismiss Lockhart's state court appeal. (BS 614.9-614.20). Through counsel petitioner Lockhart filed a civil rights removal. Petitioner Ringgold in the capacity as named trustee and through her law office sought requests for permission to file a joinder in the district court. (See BS 332-492). The record on removal demonstrated that (1) there never was any indication in the state court that Lockhart was not an heir, and(2) there was no final judgment in the state court proceedings as Judge Real had indicated in the dismissal orders for lack of subject matter jurisdiction in Case No. 09-cv-09215. (Compare 1405:7-1416, 1381-1397, 340-349).

H. The Pervasive Bias Of Judge Real Combined With the January 8, 2015 Order Adversely Impacts The Voting Rights Case Which Is No Assigned To Him And Is Pending In A Different District

Before this court's reversal of Judge Real's December 6, 2011 order, all VRA members were prevented from obtaining timely injunctive relief based on the claim that petitioners could not file any action relating to administration of the courts or probate courts or relating to the Aubry Family Trust. Now the entry of the January 8, 2015 order presents the same limitations even though it is in conflict with this court's mandate.

The VRA case, in part, seeks a monitored special judicial election in the counties where the judges of the courts of record have accepted public employment and office. VRA members claim there is direct

conflict between section 5 of SBX2 11 and the Supremacy Clause and the Civil Rights Act of 1866. While California Constitution Art. VI § 17 commands constitutional resignation from judicial office and Art VI § 21 commands disclosure and consent in pending proceedings; uncodified section 5 of SBX2 11 secretly offers immunity from liability, discipline, and even criminal prosecution notwithstanding the Supremacy Clause, federal law, and the California Constitution. The VRA members agree with the California Commission on Judicial Performance that this section 5 of SBX2 11 is unconstitutional but the Commission has failed to act. (See BS 500 ¶9; 510-513; 523 ¶67; 524 ¶70b; 566 ¶5-6; 615-624; 1633-1645). VRA members, in part, contend the unconstitutional condition was created to dilute minority voting strength in judicial elections.

The hideous labeling of petitioners clients of the law office (racial and language minorities) "as vexatious" is reinstated with Judge Real's new January 8, 2015 order.[19] In both Case No. 09-cv-09215 and Case No. 11-cv-01725 petitioner Ringgold attempted to obtain a protective order and restraining order for the benefit of clients who were erroneously being deemed vexatious solely based on their association with the law

[19] During the prior appeal VRA members were prejudiced by Judge Real's erroneous order. (See *Law Offices of Nina Ringgold and All Current Clients thereof* (USCA 9th Cir. Case No. 13-15366 Dkt #10 & Dkt #23); *Law Offices of Nina Ringgold et al v. United States District Court for the Eastern District of California, Sacramento* (USCA 9th Cir. Case No. 13-71484 Dkt #1).

office and based on viewpoints on section 5 of SBX2 11 and the need for a monitored special judicial election. (Aff. Exhibit 1).

I. The Need for Uniformity In Decision-Making

The January 8, 2015 order is based on factors which were expressly prohibited by this court's mandate. In light of the targeted prejudice this court should vacate the order. The mandate in Appeal No. 11-57231 should be recalled and amended to indicate that no pre-filing order was ever warranted based on filing two cases in the district court and that in 2009 there did not exist statutory authority for a justice to enter a pre-filing order in the first instance in the state appellate court.

Also to promote uniformity in judicial decision making and treatment of litigants, the March 12, 2014 mandate in Appeal No. 11-56973 should be recalled in light of the Supreme Court's decision Johnson.

ARGUMENT

I. Mandamus Jurisdiction Is Necessary Due To The Failure To Comply With The Mandate Of This Court And Due To Substantial Prejudice

A. Failure to Comply With The Mandate

1. Petitioners Did Not Have Notice and Opportunity To Be Heard

Judge Real completely disregarded this court's mandate and the first factor in De Long *supra* by failing to provide notice and an opportunity to be heard before the January 8, 2015 order was entered.

He cites to a warning given over two years earlier and prior to this court's decision. (BS 26). He states that "Plaintiffs submitted a brief opposing this order and made oral arguments before this court on December 5, 2011". (BS 27) . This was also before this court's August 4, 2014 decision.

The failure to provide notice of the listing of cases as part of the first De Long factor prohibits any litigant from a fair opportunity to contest an order and to address the significant constitutional concerns addressed in the court's decision. There is no way to present an effective defense without knowing the matters which are considered to be "offending." The only way to produce opposing evidence is by writ of mandamus. Review by appeal would not allow the positions of the petitioners to be considered with supporting documentation.

The cases and motions specified by Judge Real not give rise to a pre-filing requirement. The order is being used as (1) a veil for bias and prejudice and (2) to continue the prejudice to the VRA Case. Additionally, Judge Real refused to comply with this court's mandate because the evidence of petitioners reveals (1) the admissions made that he was using non-existent sources of information in Case Nos. 09-cv-09215 and 11-cv-01725 and (2) the method by which his December 6, 2011 order was used in the state court to prejudicially bar access to the court (when there was an effort to terminate petitioners' interest in the trust without bond).

2. There Is Not An Adequate Record For Review

The January 8, 2015 order does not present an adequate record for review particularly since it excludes any response of petitioners.

The order specifies that there were sixteen baseless motions and includes a list that includes pleadings in two cases and motions therein. (BS 28, 33, 34). The list actually contains one case with three ex parte applications and two motions; and the second case with two ex parte applications and two motions. None of the filings show that they were baseless, frivolous, or intended to harass. (See Affidavit Exhibit 1). Disregarding the court's mandate Judge Real continued to include requests for accommodation for disability in the list of filings. (Id. at Ex 1 p. 1 & 6).

The body of the order mentions a prior appeal in the Ninth Circuit and two writs of certiorari. None were determined to lack merit or to be frivolous and the January 8, 2015 order does not indicate that they were.[20]

The decision, in passing, mentions state litigation and focuses on hearsay statements in an unpublished decision. Petitioners could not oppose the method of taking judicial notice or present opposing

[20] The Ninth Circuit appeal mentioned involved Judge Real's dismissal orders before the admission made by Sankary that the Judge was using non-existent sources of information. (BS 346-349, 380, 1381-1397). It is well established law that the denial of a petition for a writ of certiorari is not an expression of an opinion on the merits. See Laborers' Internt. Un. Of NA Local No. 107 v. Kunco, 472 F.2d 456, 459 fn2 (8th Cir. 1973).

evidence, therefore there is not a sufficient record for review. Many references in the order are erroneous.[21]

3. There Is No Basis For Any Finding Of Frivolousness Or Harassment

The mandate specifies that it was incumbent on the court to make substantive findings as to the frivolous or harassing nature of the litigant's actions. Ringgold-Lockhart at 1064. As to the number of filings two cases is not a sufficient basis for a pre-filing order particularly when there is no order in Case Nos. 09-cv-09215 and 11-cv-01725 which indicated that pleading or motion was frivolous, without merit, or intended to harass. There is no specification as to how the two cases and the motions therein meet the substantive findings of frivolousness or harassment under the direction of this court's decision. Judge Real states: "plaintiffs offer nothing more that flimsy justifications for bringing this plethora of motions." (BS 31). There simply does not exist a plethora of motions or even 16 motions in the two cases filed and listed in the order. (Aff. Exhibit 1).[22] Additionally, there is no basis for the indication

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[21] See Affidavit Exhibits 2 & 3. Of the four matters mentioned only one was initiated by petitioners--the verified 2007 petition for violation of constitutional rights violation. The petition has never been determined to be frivolous or lacking in merit. Two of the matters have no indication that they were baseless, frivolous, or lacking in merit. In the matters that were not initiated by petitioners there was a complete absence of jurisdiction.

[22] Judge Real indicates that the federal cases had to do with a 2005 decision to remove plaintiff Ringgold as a temporary trustee. (BS 31).

that Ringgold's effort to seek injunctive relief and a protective order for the clients of the law office who were being deemed vexatious by association was frivolous or lacking in merit. (Aff. Exhibit 1 p. 1-2 items 2, 4, & 6).

As to the state court litigation, Judge Real relies on hearsay and incompetent evidence or misconstrues the matters without the ability to petitioners to respond. For example, over 99% of all proceedings in the state court were not initiated by the petitioners. Therefore, the reference to excessive litigation is without foundation. The reoccurring petitions are being filed by Sankary to intentionally deplete the trust. Persons such has Lockhart who were never given notice of the proceedings initiated by Sankary without subject matter or in rem jurisdiction or constitutional notice must file statutory objections in order to maintain their right to recover damages. See Probate Code § 16461, BS 298-300).

Judge Real refers to motions in the state court but there are no motions identified in the order. (BS 30). He references the vexatious litigant order pertaining to petitioner Ringgold. However, by excluding Ringgold from the proceedings there is an omission of relevant and pertinent evidence. (i.e. that SB 731 demonstrates that there was no authority to make such order in 2009, that the order to show cause on its face specified a non-existent original proceeding, that the statutory

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But there is no reference to an order or decision where Ringgold and all trustees named in the trust instrument and the will of Robert Aubry had been removed or converted into temporary trustees or that divested the trustees named in the trust instrument of the power of appointment.

provision cited in the order to show cause is completely different than the statutory provision that identified in the resulting order, that no list of cases was ever provided, that there is no right of review like all others persons under the normal mandatory statutory procedures), and that Ringgold had filed an appeal solely in the capacity as an attorney and fiduciary and the appeal had nothing to do with any vexatious litigant determination in the trial court.

Inflating the number of motions in the federal court and engaging in hyberbole as to the state court proceedings (while excluding petitioners from submitting evidence or objecting to the method of taking judicial notice) is in conflict with this court's mandate.

4. There Is No Pre-Filing Order Warranted, And Even If Two Cases Filed Could Form A Basis For Such Order, The January 8, 2015 Order Is Not Narrowly Tailored

The January 8, 2015 order concludes that "after considering a multitude of remedies, including a pre-filing requirement and sanctions, the Court determines that a pre-filing requirement is a proper remedy to curb ***Plaintiffs' frivolous motions practice***." (BS 32). However, no frivolous motions practice occurred in the federal court and no motions practice in the state court was ever mentioned in the order.

To support the claim of a need of a pre-filing requirement, Judge Real intentionally misrepresents the evidence. For example:

- Judge Real states that "Ringgold was sanctioned three times, and warned in another state court appeal 'further attempts to appeal from nonappealable orders may result in the imposition of sanctions." (BS 32). Ringgold has not been sanctioned three times

in the state court proceedings. Judge Real is referring to a hearsay reference which is now almost 5 times removed and has nothing to do with the Aubry Family Trust. (See Appeal No. 11-57247 Dkt 55 BS 430-438).

- After referring to an unrelated hearsay matter that has absolutely nothing to do with the Aubry Family Trust, Judge Real then claims that "Ringgold, unperturbed by the sanction and warning, continued in the same matter until the state court finally placed a pre-filing requirement on her". (BS 32). Petitioner Ringgold was not and could not be "unperturbed" by a sanction which never occurred in the Aubry Family Trust. The statement is completely illogical and incompetent. The order to show cause in the Aubry Family Trust was issued in the state appellate court out of the blue indicating a non-existent original proceeding had been filed. The order to show cause was not preceded by any sanction order. No motion was filed by a defendant and no list of cases was ever provided. (See Appeal No. 11-57247 Dkt 55 BS 393-394).

- The evidence does not support Judge Real's indication that Lockhart filed three improper appeals. (See Aff. Exhibit 2). Also, by not conducting a hearing, Judge Real intentionally conceals how the December 6, 2011 order was used in order to prevent Lockhart from gaining standing to obtain access to the court and to his inheritance.

There was no justification to exclude petitioners from the proceedings except to perpetuate an erroneous and bias view.

The January 8, 2015 order is vastly overbroad and it indicates that "[p]laintiffs will need permission from this Court prior to filing any action that arises from or relates to the Aubry Family Trust, including but not limited to, those regarding the California state court's remuneration

structure or the probate courts' administration of the Aubry Family Trust, including its authority to remove Plaintiff Ringgold as trustee thereof. The court will approve all filings that it deems to be not duplicative and not frivolous." (BS 33).

The pre-filing order in the state court was entered in the Aubry Family Trust matter. As can be seen from the complaint in the VRA Case it has been applied to all clients of the law office even though no motion had been filed by a defendant in accord with the mandatory statutory procedures.[23] Therefore, requiring permission to file any action that "arises from" or "relates to" the Aubry Family Trust is overbroad. The order is an indirect effort of Judge Real to act in the VRA Case in a different district in when he is not the assigned judge. Additionally, requiring permission as to the "California state court's remuneration structure" is grossly overbroad. Case No. 09-cv-09215 has no allegation concerning the state court's remuneration structure. (See BS 1440-63).

Neither in the VRA Case nor in Case No. 11-cv-01725 is there any issue regarding the state court's remuneration structure. The issues involve the application and interpretation of California Constitution Art. VI Sections 17 and 21. The constitution itself defines public employment and office and the grounds for constitutional resignation. Not only is there no basis for a pre-filing order, such order cannot and should not prohibit any person from addressing matters pertaining to the plain

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[23] See BS 493-580 ¶ ¶ 5, 39-44, 50-51, 53, 115-116, 143-144, 145e, 146.

language of the state constitution. Judge Real's order simply appears to be an indirect method to prevent petitioners from being parties in the VRA Case and to prevent other VRA members from using key evidence which was not available to the public in 2009.

The order is also overbroad in that it requires permission to file any action which relates to "probate courts' administration of the Aubry Family Trust, including its authority to remove Plaintiff Ringgold as trustee thereof." Case No. 09-cv-09215 was dismissed based on the lack of subject matter jurisdiction. Therefore there has not been an adjudication on the merits. The state court dismissed the 2007 verified petition for constitutional rights violations. Again there has been no adjudication on the merits. There has never been any petition to remove petitioner Ringgold as a trustee. A pre-filing condition is intended to bar "re-litigation" not the possibility that there may be a "first adjudication". There is no substantive finding in either Case No. 09-cv-09215 or 11-cv-01725 which would support the breath of the January 8, 2015 order.

As with the December 6, 2011 order there is no reasonable justification given for the scope of the order and it is an unwarranted chilling of the right of free access to the courts. It is an indirect limitation of the right of free access to the court and the right of associations by clients of the law office already engaged in the VRA Case.

There is no basis for a pre-filing injunction of any nature in the district court. Moreover, there was no sanctionable conduct in Case No. 11-cv-01725 and no party requested sanctions. Even if there had been a

minimal showing of frivolous motions practice in the district court there is no showing that a less drastic remedy would be inappropriate.

B. The *Bauman* Factors For Mandamus Jurisdiction Have Also Been Satisfied.

This court should also grant relief by mandamus jurisdiction because the Bauman factors have been satisfied. First, petitioners cannot adequately pursue the relief by appeal because they were excluded from participation in the proceedings and the only way to present evidence is by writ petition. Second, the damage cannot be corrected by appeal because in conflict with this court's decision petitioners could not present evidence or legal argument. The damage to third parties and VRA members cannot be corrected by an appeal by petitioners and this prevents timely and effective injunctive relief which is the true intent of Judge Real's orders. (See Appeal No. 13-15366 Dkt Nos. 10, 11, 23). Third, the order is clearly erroneous as discussed above. There is continuing and serious irreparable harm and potentially no remedy based on claims of immunity. There is constitutional injury associated with impairment of First Amendment rights to associate for the common advancement of ideas. See Perry at 1151. Fourth, the January 8, 2015 order disregards the mandate of this court and engages in an oft-repeated error of sua sponte taking judicial notice of hearsay matters without allowing opposition or opposing evidence to be presented. Finally, although the proceedings do not raise issues of first impression, the barring access to the court by device of a pre-filing order, is being

used to delay and frustrate legitimate and proper means to address issues of first impression in the VRA Case. (BS 493-580).

II. Supervisory And Advisory Mandamus Is Warranted Due To The Public Interest And Due To The Bias And Due Erroneous Procedures Of Judge Real That Cause Substantial Harm To Persons Involved In The Voting Rights Case.

The pre-filing orders of Judge Real have been used in the VRA case and in the individual cases of VRA members even when they have no relationship to the Aubry Family Trust. This significantly distorts proper procedures that perpetuate the harm to VRA members. See United States v. Horn *supra* at 769. It also perpetuates harm to the public's interest since the VRA case seeks to appoint a public trustee, to implement disclosure and consent proceedings in pending cases, and to implement a monitored special judicial election. There is significant evidence that Judge Real's orders are not about curbing frivolous litigation, but rather to suppress particular ideas and valid grievances to take sides with state court justices who are defendants in pending federal litigation.[24]

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[24] There have been at least three state trial court judges who have ordered that the pre-filing order entered in the state appellate court did not apply to Ringgold as an attorney (including in the Aubry Family Trust Case) (BS 1105). In May 20, 2011 the California Legislature rejected the notion that the California Vexatious Litigant Statute applied to represented parties or attorneys. (BS 625-627). On June 23, 2011 the California Supreme Court also determine the statute did not apply to represented parties. See Shalant v. Girardi, 51 Cal.4th 1164 (Cal. 2011). On August 10, 2011 Judge Real ordered in Case No. 11-cv-01725 the challenge to the

Supervisory mandamus is proper due to public's interest and because objectively the pre-filing condition has been used to unduly interfered with petitioners' and the VRA members' First Amendment rights of group association. See Perry *supra* at 1159.

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statute as to injunctive relief would go forward. (BS 927-930). On September 1, 2011 the Governor and Attorney General filed an answer containing an admission directly related to petitioner's challenge to the statute. (BS 917). Thereafter, a November 7, 2011 Judge Real entered a sua sponte pre-filing order and then entered the December 6, 2011 order which was later reversed by this court. Justice Roger Boren and Justice Paul Turner who are defendants in pending Appeal No. 11-57247 then used Judge Real's December 6, 2011 order to indicate that petitioner Lockhart was a vexatious litigant in the first instance in the state appellate court although Lockhart had never filed any case in propria persona and no defendant had filed the mandatorily required statutory motion under CCP Section 391.1-391.6. (See Affidavit Exhibit 2 p. 6-7, BS 614.14-20). The supervising state court judge had already granted leave to Lockhart to file a motion to vacate (when Lockhart's filings never required permission to file because he had never been determined to be a vexatious litigant. His filings (like other filings of VRA members solely based on their association with the law office). It was by use of Judge Real's December 6, 2011 order by defendant justices in pending federal litigation that petitioner Lockhart's appeal was dismissed before any brief was filed in the state court. SB 731 did not become effective until January 1, 2012. (BS 614..1-614.8). The sua sponte November 7, 2011 order was not about "vexatious" conduct, but was in response to the fact that the Legislature, California Supreme Court, trial judge, and the chief enforcement officers had engaged in conduct that supported petitioners' claims.

III. To Promote Uniformity In Judicial Decision-Making And Treatment Of Litigants The August 27, 2014 Mandate In Appeal No. 11-57231 Should Be Recalled And Amended

Given Judge Real's refusal to conform to the actual terms, intent, and spirit of this court's mandate, this court should recall the August 27, 2014 mandate in Appeal No. 11-57231 and modify the decision to indicate that there never existed a basis for a pre-filing injunction based on filing two cases in the district court which were not frivolous or lacking in merit. Upon recalling this mandate this court should also specify that SB 731 demonstrates that there never existed statutory authority in 2009 to enter a vexatious litigant order in the first instance in the state appellate court particularly in light of the delay and indirect harm cased to the VRA members.

IV. To Promote Uniformity In Judicial Decision-Making And Treatment Of Litigants The March 12, 2014 Mandate In Appeal No. 11-56973 Should Be Recalled

The mandate in Appeal No. 11-56973 as to the January 10, 2014 memorandum should be recalled consistent with this Circuit's authority. See Zipfel *supra.* The subsequent decision of the Supreme Court in Johnson departs in pivotal aspects from the January 10, 2014 memorandum. Johnson confirmed that federal pleading rules "do not countenance dismissal of a complaint for an imperfect statement of the legal theory supporting the claim asserted." The Supreme Court stressed it was improper to require plaintiffs to punctiliously plead claims under 42 U.S.C. § 1983. It held that it was sufficient for the plaintiffs to simply

and concisely allege the events claimed to entitle them to damages. "[T]hey[are]… required to do no more to stave off threshold dismissal for want of an adequate statement of their claim". Id at 347. The Supreme court further held:

> "For clarification and to ward off further insistence on a punctiliously stated 'theory of the pleadings,' petitioners, on remand, should be accorded an opportunity to add to their complaint a citation to § 1983. See Wright & Miller, supra, §1219, at 277-278 ('The federal rules effectively abolish the restrictive theory of the pleadings doctrine, making it clear that it is unnecessary to set out a legal theory for the plaintiff's claim for relief.' (footnotes omitted)); Fed. Rules Civ. Proc. 15 (a)(2) ('The court should freely give leave [to amend a pleading] when justice so requires.'). " Id.

The plaintiff in Johnson omitted reference to 42 U.S.C. § 1983 in the complaint. The Supreme Court determined that Rule 8 did not countenance dismissal of a complaint for an imperfect statement of a legal theory support the claim asserted. Id. at 347. The foundation of the court's holding was that no heightened pleading rule required a plaintiff bring a suit for violation of constitutional rights. Id. citing Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993) (a federal court may not apply a standard "more stringent than the usual pleading requirements of Rule 8 (a) "in civil rights cases alleging municipal liability"); See also Erickson v. Pardus, 551 U.S. 89, 93 (2007), which held that a complaint need only "give the

defendant fair notice of what the . . . claim is and the grounds upon which it rests."

. The January 10, 2014 memorandum omits the fundamental legal theory asserted under 42 U.S.C. § 1982, and if for some reason the court determined it to be an imperfect statement of the legal theory, under Johnson leave to amend should have been granted. As to the claims under 42 U.S.C. § 1983, inconsistent with Johnson, the court applied a heightened pleading standard and confused the standard applicable to the county itself versus its officers, Andrea Ordin and John Clarke. The allegations of the complaint are clear that petitioners were not making a claim concerning judicial compensation. Instead, they alleged there was a lack of notice, fundamental jurisdiction, and an existing unconstitutional condition in the proceedings that mandatorily required disclosure and consent of all parties to the proceeding. (Aff. Exhibit 4 ¶22-26, 39, 43). The complaint extensively alleged that there existed pervasive discriminatory and unconstitutional rules, customs, policies and procedures divesting African American families of the right to inherit, by persons acting under color of state law, and that substantial grievances had been filed. (Id. ¶ 38-46). It alleged that there was divestment of property through a non-appealable order entered by "county officials and judges impacted by self-effectuating resignations under Article VI § 17 of the California Constitution." (Id. ¶43). It alleged that the "enforcement of the qualification rules and customs…are similar in effect to the previous judicial enforcement of restrictive covenants

based on race that adversely impacted [the African American settlors of the trust]". (Id. ¶42).

A. The Memorandum Improperly Indicates The Regular Operation Of The California Vexatious Litigant Statute

Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) only hold that allegations of a complaint must contain enough facts to show that a claim is "plausible." These cases do not apply a heightened pleading standard.[25] In Johnson the Supreme Court held that these cases do not pertain to a legal theory but rather to factual allegations. Johnson at 347. Petitioners' legal theory was that the California Vexatious Litigant Statute did not apply in the first instance in a state appellate court (when no vexatious litigant determination had been made previously) and without a right of review; when the statutorily mandated due process motion had not been filed by a defendant; or to fiduciaries, represented parties, and attorneys who are not in propria persona. The legal theory was sufficiently identified and the factual allegations concerning how the statute was applied in a discriminatory and retaliatory manner was sufficiently pled. (Aff. Exhibit 4 ¶12, 27-37, 46, 53, 54a, 55a, 56, 58).

[25] Twombly. Twombly expressly states " . . . we do not apply any 'heightened' pleading standard,. . . ." 550 U.S. at 569, n. 14. Iqbal likewise stated that "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era,. . . ." Ashcroft at 678.

The complaint in 11-cv-0725 alleges it was making both facial and as applied challenges to CCP § 391.7. (Aff. Exhibit 4 ¶ 12). The memorandum indicates that as to the claim under 42 U.S. C. § 1983 that the allegations did not "allege facts to plead a plausible claim of discriminatory application of California's vexatious litigant statute" and that the complaint alleged "the regular operation" of the statute. (BS 732-3). The allegations as to how the statute had been applied to plaintiffs was to be taken as true. Moreover, as apparent by the enactment of Senate Bill 731 the complaint properly alleged an irregular application and operation of the statute. Senate Bill 731 confirms that a state appellate justice had absolutely no power or jurisdiction to enter a prefiling order prior to January 1, 2012. To the present date a state appellate justice still has no power or jurisdiction to initiate a proceeding in the first instance in the appellate court to determine vexatious litigant status, and the statute does not apply to persons who are not in propria persona. The allegations of the complaint were plausible and confirmed by formal legislative action to be correct. (See Aff. Exhibit 4 ¶ 27-36, BS 610-614.8, 625-627). The notice appeals were filed before the effective date of SB 731

B. The Claims Under 42 U.S.C. § 1982 and § 1985 Were Properly Pled Under The Standard Of *Johnson v. City of Shelby*

Jones v. Alfred H. Mayer Co., 392 U.S. 409, 413 (1968) held that 42 U.S. C. § 1982 is a valid exercise of the power of Congress under the Thirteenth Amendment and bars discrimination both public and private.

(This includes the state, municipalities, and individuals, or entities). The statute bars judicial enforcement of laws that deny African Americans the same right to inherit as enjoyed by White citizens. See also Hurd v. Hodge, 334 U.S. 24 (1948), Shelly v. Kraemer, 334 U.S. 1 (1948). Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) bars retaliation for advocacy concerning rights protected under 42 U.S.C. § 1982. The statute allows for monetary and non-monetary damages or other remedies to effectuate the purpose of the statute. Id. at 238-240.

The complaint alleges that African American heirs and trustees are being divested of property of a private trust which is not court supervised, in proceedings without subject matter jurisdiction, without notice, and without the mandatorily required bond. It alleges that the proceedings are being conducted by county employees and officials. (judges of the courts of record who have constitutionally resigned)(Aff. Exhibit 4 ¶4-5, 21-26 , 39-43, 45, 59-61). It alleges retaliation for filing grievances in an effort to enforce the right to inherit and to penalize plaintiffs for attempting to enforce these rights. It alleges an intention to use CCP § 391.7 against those filing grievances and to divest fiduciaries of the intangible property right of the power of appointment and discretion for benefit of an entire generation of heirs . (Id. ¶ 27-30, 37, 46, 59).

The memorandum states it was proper to dismiss the complaint because it "failed to state a claim that either the application of the state vexatious or the selective appointment of trustees in probate matters

involved a conspiracy" and "have not alleged facts showing that persons of color are being deprived a right or privilege that is otherwise extended to white citizens." (BS 733-4). The key issue in the case is not "the selective appointment of trustees" because the court had lacked subject matter jurisdiction to appoint a White trustee of a non-court supervised trust family trust when the actual African American trustees had not been removed; no petition to remove the African American trustees had been filed; and the trust instrument itself specified the procedures for successive trusteeship. (BS 1592-1593, 1601, Aff. Exhibit 4 ¶39-40, 53, 54a, 58). The petitioners are persons of color, alleged this to be the case, and sufficiently alleged a deprivation of the right to inherit in proceedings operating in the complete absence of jurisdiction without mandatory disclosure and consent by county employees and officials conducting the proceedings. (i.e. treating a private trust as a proceeding to administer an decedent's estate without publication of notice) (See Aff. Exhibit 4 ¶ 43). The memorandum omits the legal theory concerning the conflict between Section 5 of SBX 211 versus the Supremacy Clause, California Constitution Art. VI § 17 and § 21, and 42 U.S. C. § 1982. The African America heirs and trustees had right to stop the divestment of their property by withholding consent to the proceedings operating without subject matter jurisdiction and to stop contributing to the funding of unconstitutional public employment that was causing constitutional resignation of the judges of the courts of record (by not consenting).

C. The Claims Under 42 U.S.C. § 1983 Were Properly Pled Under The Standard Of *Johnson v. City of Shelby*

42 U.S.C. § 1983 requires only two allegations to state a cause of action. First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law. Gomez v.Toledo, 446 U.S. 635, 640 (1980). The complaint's allegations satisfied this requirement.

The complaint alleged a targeted and retaliatory application of CCP § 391.7 to African Americans filing grievances concerning the alleged discriminatory policies. Defendants Jerry Brown and Kamala Harris admitted fair notice of the claims and admitted essential facts pertaining to the challenge to the statute by their answer. It was Judge Real's sua sponte sua sponte order after an answer was filed which caused the dismissal. (BS 789, 791-793, 870-873). The memorandum is inconsistent with Johnson, inserts a legal theory not alleged by petitioners, and then affirms dismissal on this basis. The complaint alleged that CCP §391.7 was being applied to petitioners and other racial minorities for filing valid grievances regarding discriminatory rules, customs, and policies and when the statute by its express terms was not applicable to them. (i.e., Aff. Exhibit 4 ¶54a-d). As to the statute in general, the complaint alleged the statute was improperly applied to persons acting in a representative capacity and in the first instance in a state appellate court without the mandatory due process motion or

hearing in the trial court. (i.e. Id. ¶53). The memorandum cites to Washington v. Davis, 426 U.S. 229, 242 (1976) for the proposition that the complaint "failed to allege facts showing that the discriminatory impact of which they complain is fairly traceable to a discriminatory purpose". (BS 733). Washington is not applicable. It arose in the context of a motion for summary judgment and it involved a complaint that alleged a test was racially discriminatory. The complaint at issue here did not allege the statute itself had a discriminatory purpose. This is an improper legal theory raised in the memorandum which then improperly functioned as the basis to affirm dismissal. It is not based on the facts alleged in the complaint.[26]

Again the memorandum does not involve a legal theory alleged in the complaint and the facts pertaining to the claims alleged by plaintiffs are sufficiently plead. For example, the complaint does not involve claims concerning an "unlawful judicial pay scheme". (BS 733). It involves a self-effectuating constitutional resignation from judicial office. The allegations of the complaint involve lack of disclosure and mandatory consent to proceed before judges of the courts of record who

[26] Although not stated in the memorandum, to the extent the court intended to cite to Washington with respect to the conflict between Section 5 of SBX2 11 versus California Constitution Art VI §17, federal laws pertaining to racial equality and the United States Constitution, the case is still not applicable. See Pet. for Rehearing (11-56973 Dt. 90 p. 3-7); Hunter v. Erickson, 393 U.S. 385 (1969), Washington v. Seattle School Dist. No. 1, 458 U.S. 457 (1982).

have constitutionally resigned. (Aff. Exhibit 4 ¶ 21-26, 49, 59).[27] California Government Code § 53200.3 was repealed and public employment of the judges of the courts of record continues to exist in the state court exists in violation of the state Constitution. Said the judges subject to constitutional resignation have both general and financial interests in the proceedings. See Tumey v. Ohio, 273 U.S. 510, 523 (1927).[28]

D. Other Issues

Paragraphs 3, 4, and 6 of the memorandum are not directed to a particular cause of action and the standards under 42 U.S.C. § 1982 and §1983 are not the same. [29] Paragraph 3 of the memorandum treats the claims against the County of Los Angeles as an entity, as if it is the same as the claims against the county employees and officers. (BS 734 "The district court properly dismissed the claims against the County of Los Angeles and County Counsel Andrea Ordin because Appellant failed to plead facts demonstrating that these County Actors are liable for the actions of California state court judges"). Compare Johnson at 346 citing Owen v. Independence, 445 U.S. 622 (a "municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983").

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[27] See Pet. for Rehearing (11-56973 Dt. 90 p. 1-7, 10-11).

[28] See Pet. for Rehearing (11-56973 Dt. 90 p. 3-4 & fn 4).

[29] 42 U.S.C. § 1982 imposes respondeat superior liability against state and county actors.

The County is liable for its policy and customs. Monell v. New York City Dept. of Social Serv., 436 U.S. 658 (1978). The complaint alleges that its policies and customs concerning employment of judges of the courts of record as county employees and officials and this has caused constitutional vacancies of judicial office for which it is liable thereby mandating disclosure and consent. (See Aff 3 ¶21-26, 43, 49, 55e).[30] The persons (former judges) hired by the county as its employees and officials are not state court judges of the courts of record without disclosure and consent of the parties in the proceedings. (Aff Ex 3 ¶ 25).

The application for temporary restraining order referenced in the January 10, 2014 memorandum highlighted the fact that clients of the law office were being harmed by the irregular application of CCP §391.7. The clients, all racial and language minorities, had filed grievances and claims under federal law, objected to Section 5 of SBX2 11, and ultimately joined and filed the VRA Case. (i.e. Justin Ringgold-Lockhart, ASAP Copy and Print, Ali Tazhibi, Cornelius Turner, Nathalee Evans).[31] (See 11-cv-11-01725 Dkt 95). Although members of the VRA case were not parties in the underlying case in Appeal No. 11-56973, the unpublished memorandum is being used in conflict with Circuit Rule 36-3.

Good casue has been shown to recall the mandate to prevent injustice and to promote uniformity and consistency with the Supreme

[30] See also BS 1699-1728.

[31] Other clients joined after encountering similar circumstances.

Court's decision on Johnson. At minimum, recalling the mandate should allow leave to amend the complaint.

V. This Court Should Forward The Petition And Related Cases For Out Of State Reassignment Under The Statutory Procedures Of 28 U.S.C. § 292 (d) Or Reassign The Case Under 28 U.S.C. § 2106.

Petitioners join with all other persons involved with or associated with the VRA Case to request that this case be assigned to an out of state judge or justice under the procedures of 28 U.S.C. § 292 (d). Petitioners request that this court forward the information of this petition and related filings to the authorized statutory officer (along with the requests of others seeking the same procedure). Upon forwarding this information, appellants request issuance of a issue of certificate of necessity so that an out of state assignment may be made as to all cases in the geographical area of this Circuit that are raising challenges to section 5 of SBX2 11 may be assigned to a judge or justice outside the State of California. Petitioners reasonably believe there is pervasive bias directed to persons involved in and associated the VRA Case and retaliation against them.

Should reassignment not be allowed under 28 U.S.C. § 292 (d) petitioners request reassignment under 28 U.S.C. § 2106. Judge Real refused to comply with this court's mandate and refused to allow petitioners to participate in the proceedings as directed by this court. Judge Real has shown that he is unable to set aside his previously asserted views, that he has repeatedly conducted proceedings with an

appearance of advocacy or partiality, has used non-existent or extrajudicial sources of information, and has demonstrated improper and unwarranted embroilment in the case; so it is plainly evident that further proceedings before Judge Real cannot serve the ends of justice or the public interest and that there would not be an atmosphere in which a fair trial or proceeding could be conducted. See United States v. Harris, 501 F.2d 1, 10-11 (9th Cir. 1974).

CONCLUSION

For the forgoing reasons petitioners requests that this court grant the relief sought herein.

Dated: March 30, 2015

Respectfully submitted,

LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold, Esq.
Attorney for Petitioner

CERTIFICATE OF WORD COUNT

The text of this petition consist of 13,400 words as counted by the Corel Word Perfect version 8 word-processing program used to generate the petition. This word count excludes parts generally exempted by Fed. R. App. P. 32 (a)(7)(B)(iii). Simultaneous with filing this petition I have filed an application requesting permission to file the petition with extended page length.

Dated: March 30, 2015

By: s/ Nina R. Ringgold Esq. ____

Nina R. Ringgold, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2015 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS, AND FOR STAY OF ORDERS ENTERED ON DECEMBER 23, 2014 AND JANUARY 8, 2015, AND FOR OTHER APPROPRIATE RELIEF; PETITION TO RECALL MANDATE AS TO APPEALS IN DISTRICT COURT CASE NOS. CV11-01725 R (PLA); AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

The following person is not a registered CM/ECF user and was served by Priority Mail on March 31, 2015:

For the Respondent Court
Judge Manuel L. Real
United States District Court for the Central District
312 N. Spring Street - Second Floor
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on March 31, 2015 at Los Angeles, California.

s/ Matthew Melaragno_____

9th Cir. Civ. Case No. _____
USDC Case No. CV11-01725 R (PLA)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUSTIN RINGGOLD-LOCKHART; NINA RINGGOLD ***in the capacity as named trustee of the Aubry Family Trust, in the capacity as named executor of the estate of Robert Aubry, and in the capacity*** **as** ***counsel for Justin Ringgold-Lockhart, ASAP Copy and Print, Ali Tazhibi, Nazie Azam, Nathalee Evans, Cornelius Turner, Greta Curtis, and Karim Shabazz***

Petitioners,

v.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

COUNTY OF LOS ANGELES et al.,

Real Parties In Interest.

From the United States District Court for the Central District
The Honorable Manuel Real

AFFIDAVIT ON PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS, AND FOR STAY OF ORDER ENTERED ON JANUARY 8, 2015, AND FOR OTHER APPROPRIATE RELIEF; PETITION TO RECALL MANDATE AS TO APPEALS IN DISTRICT COURT CASE NOS. CV11-01725 R (PLA); AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

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AFFIDAVIT OF COUNSEL

1. I am the attorney of record for the petitioners. If called as a witness I could and would competently testify to the matters stated herein.

2. This affidavit is submitted in support of the petition entitled "Petition For Mandamus, Supervisory Or Advisory Mandamus, And For Stay Of Order Entered On January 8, 2015, And For Other Appropriate Relief; Petition To Recall Mandate As To Appeals In District Court Case Nos. Cv11-01725 R (PLA); And Petition For Intercircuit Assignment Under 28 U.S.C. § 292". This writ petition is brought as soon as practicable. Petitioners as well as persons associated with the Voting Rights Case are adversely harmed by the January 8, 2015 order and were involved in seeking alternative remedies and addressing urgent matters pertaining to their case in an good faith effort to protect their interests. See Cheney v. United States Dist. Court for the District of Columbia, 542 U.S. 367 (2004). This includes but is not limited to seeking relief by filing a joint petition for a writ of certiorari, completing briefing in pending appeals in the Ninth Circuit and state appellate court, protecting interests as to matters pending in the state trial court, pursuing administrative remedies, and engaging is efforts to resolve matters pertaining to cases. The order at issue in this case does not comply with this court's mandate and thereby limits the ability of persons with common issues of law and fact proceeding jointly. (the Voting Rights Case also includes, but is not limited to, claims under the California Political Reform Act, California Whistleblower Protection Act, the Civil Rights Act of 1866; Requests for appointment of a public trustee; and for

declaratory and injunctive relief).

3. I hereby authenticate the documents in the appendix as true and correct copies of the documents specified in the index. The appendix consists of exhibits 1-46, bates stamp numbers 1-1728.

4. Attached hereto are the following Exhibits:

Exhibit 1- a chart which was prepared by me that summarizes the list of federal cases identified in the January 8, 2015 order

a. ** The January 8, 2015 order erroneously and falsely indicates that petitioners filed 16 motions.** (BS 33, "Before this Court, both Plaintiffs have brought at least sixteen baseless, frivolous motions").

b. As shown in Exhibit 1 in Case No. 09-cv-09215 plaintiffs filed 3 ex parte applications and two motions. None were baseless or frivolous. In Case No. 11-cv-1725 plaintiffs filed two ex parte applications and two motions. None were baseless or frivolous.

Exhibit 2- a chart which was prepared by me which summarizes the list of state cases mentioned in passing in the January 8, 2015 which do not provide any support for the entry of the January 8, 2015 order.

a. Petitioners were never allowed to participate in the proceedings to address the cited matters or the propriety of taking judicial notice of hearsay matters stated in the decisions.

b. In the four cases mentioned in passing in the January 8, 2015 order plaintiffs were not the parties initiating the proceedings, except one. The only proceedings initiated by plaintiffs was a verified constitutional rights violation petition which was dismissed without prejudice as to petitioner Ringgold and Lockhart was determined to be a non-party without standing.

(i) Two of the matters state absolutely nothing about any matter being baseless or frivolous.

(ii) One matter concerned the pre-filing injunction as to petitioner Ringgold which SB 731 demonstrates there was never a jurisdictional basis for the decision and the actual appeal (which had nothing to do with any pre-filing injunction) was never allowed to proceed.

(iii) The last matter, and as to all the proceedings initiated by Sankary or initiated persons who had no interest in the trust, they were proceeding in a complete absence of jurisdiction. This is because they were based on the proceedings initiated by Sankary without bond under Probate Code Section 11700. This statutory provision has absolutely no application to a private inter vivos trust. The private trust and trust instrument had not been terminated. No final judgment has been entered on the proceedings initiated by Sankary and no such judgment can be entered until he has completely liquidated the trust.

Exhibit 3- a chart which was prepared by me which summarizes the list of cases identified in footnote 3 in the case of Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057 (9th Cir. 2014) (Appeal No. 11-56973).

a. ** The chart illustrates generally that petitioner Ringgold was not initiating cases in propria persona and that she was acting as an attorney or in a fiduciary capacity, or as a defendant/or person with defendant status**

b. These matters were never specified in any order to show cause directed at petitioner Ringgold and she was never allowed address matters indicated in the decision. This highlights why the order to show cause must identified the cases or proceedings which form the basis of a pre-filing injunction so that the party potentially barred access to the court has a meaningful opportunity to respond.

Exhibit 4- is a copy of the April 6, 2011 first amended complaint filed in *Ringgold-Lockhart et al v. County of Los Angeles et al* Case No. 11-cv-01725.

a. This complaint is provided with respect to the request for recall of the mandate in Appeal No. 11-56973 in light of the United States Supreme Court's Decision in Johnson v. City of Shelby, Miss., 135 S. Ct. 346 (2014) (See BS 69-89).

Exhibit 5- is a copy of the list of cases for which assignment out of the state is requested and/or cases adversely impacted by the erroneous application of prefiling orders barring access to the court or used as a form of intimidation and coercion.

a. ***The persons or entities in these cases are all seeking relief on common issues of law and fact in the VRA case and were and are still are adversely impacted by use of Judge Real's December 6, 2011 order and the entry of the January 8, 2015 order. They are all seeking an intercircuit assignment under 28 U.S.C. Section 292.***

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 29, 2015.

s/ Nina Ringgold

EXHIBIT 1

EXHIBIT 1

SUMMARY OF LIST OF FEDERAL CASES IDENTIFIED BY DISTRICT COURT

January 8, 2015 Order States:

"Plaintiffs have brought at least sixteen baseless, frivolous motions." (BS 28). "Here, after considering a multitude of remedies, including a pre-filing requirement and sanctions, the Court determines that a pre-filing requirement is the proper remedy to curb Plaintiffs' frivolous motions practice. While sanctions, expressly allowed for under Rule 11, serve to deter, Plaintiffs have demonstrated the limited effect sanctions have on their litigiousness." (BS 32).

The mandate specifies:

That for a litigant's motion practice in two cases to be so vexatious as to impose a pre-filing order against a person that ""[s]uch a situation would at least be extremely unusual, in light of the alternative remedies available to district judges to control a litigant's behavior in individual cases." Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1065.

Here there are two cases:

As shown below, one case (09-cv-09215) effectively involved three ex parte applications and two motions. None were frivolous or brought for the intent to harass. The other case (11-cv-01725) effectively involved two ex parte applications and two motions. None were frivolous or brought for the intent to harass. No finding was made that the cases themselves were frivolous or brought for the intent to harass. Disregarding the mandate, Judge Real continued to list requests for accommodation for disability as one of the listed cases. See Id. The motions were filed by the attorney petitioner Ringgold and clients Justin Ringgold-Lockhart, client Ringgold as named trustee and/or as named executor. In the latter capacity California law requires appearance of a trustee and/or executor through attorney representation. (See Admission on the pleadings in 11-cv-01725, Affidavit Ex 3 para. 28 (First Amended Complaint Case No. 11-cv-01725) BS 917 para. 28 (answer of Jerry Brown and Kamala Harris)

EXHIBIT 1

Ringgold-Lockhart et al. v. Sankary et al **(CV 09-09215)**

1	Complaint-12/15/09	Dkt1	There is no indication that the complaint is frivolous, intended to harass, or abusing the judicial system.
2	First Amended Complaint-04/5/10	Dkt 4, BS 1440-1462	There is no indication that filing an amended complaint as a matter of right (prior to service) is frivolous, intended to harass, or abusing the judicial system. Using non-existent or extrajudicial sources of information Judge Real entered five separate dismissal orders in CV-09-09215 falsely indicating that the state court had found that Lockhart was not an heir. (BS 1381-1397). The orders made dismissals based on lack of subject matter jurisdiction although no judgment had been entered in the state court on the proceedings initiated by Sankary. The CV-11-01725 does not involve the same issues or parties. Defendant John Clarke was sued in CV-09-09215 in his capacity as court clerk and dismissed from case before service. He was sued in his capacity as court executive officer in CV-11-01725. When CV-09-09215 was filed was no access to internal administrative records of the state court. (See Cal. Govt. Code Sec 68106.2 (g) (adopted 7/28/09), Cal. Rules of Ct., Rule 10.500 (adopted 1/1/10)).
3	Plaintiffs' Ex Parte Application For Temporary Restraining Order, Lis Pendens Order, Protective Order (Including To Preserve Evidence) And For Order To Show Cause Re: Preliminary Injunction -7/9/10 (Dkt 72), Denied **EXPARTE #1**	Dkt 72	There is no indication that the ex parte application was frivolous, intended to harass, or abusing the judicial system Note: The TRO also sought injunctive relief and protective order as to retaliation and interference with the cases of clients including clients Ali Tazhibi/ASAP by applying CCP Sec. 391.7 to the case of the clients' when they had never been deemed vexatious litigants. It also sought protective order and injunctive relief for charging the trust for contacting adversaries of clients as "trust business". (See Dkt 72-1 (Page 6-8 ¶ 5, 27-36 (Exhibits C-E, I-L). The clients and petitioner Ringgold were unaware that the attorneys of the adversaries of ASAP were involved in federal

EXHIBIT 1

			litigation with members of the Judicial Council Probate Task Force (Judge Aviva Bobb presiding in the Aubry Family Trust) or that Judge Aviva Bobb and defendant Justice Roger Boren were members of the Probate Task Force. (See BS 977-979, 994-1056; Dkt 72-2 ¶5 & Exhibits C-E, K, App. 948-950, 972-973, 977-978). Cal. Senate Bill 731 and the California Legislatures' rejection of Cal. Senate Bill 603 confirms that the state appellate court had no jurisdiction to enter a prefiling injunction or make a vexatious litigant determination in the first instance in a court of review or apply such determination to persons not proceeding in propria persona or clients of a law office. (See BS610-614.8, 625-627).
4	Ex Parte Application to Stay Proceedings in the United States District Court and for orders necessary to maintain the status quo between the parties pending appeal in the United States Court of Appeals for the Ninth Circuit Appellate Case No. 10-56175-7/24/10 (Dkt 91), Denied **EXPARTE #2**	Dkt 91	There is no indication that the ex parte application for stay after filing a notice of appeal from denial of a preliminary injunction was frivolous, intended to harass, or abusing the judicial system. There is no indication that the claim that the clients of a law office were being harmed was frivolous, intended to harass, or abusing the legal system.
5	Motion to Vacate, for New Trial and to Alter or Amend, or Relief from Judgment and for Reconsideration 9/20/10 (Dkt 108-112) , Denied **MOTION #1**	Dkt 108-112	There is no indication that the motion was frivolous, intended to harass, or abusing the judicial system. In the proceedings Judge Real was using non-existent or extrajudicial sources of information.
6	Ex Parte Application to Stay Pending Review of Writ of Mandamus-1/11/11 (Dkt 140) , Denied **EXPARTE #3**	Dkt 140	There is no indication that the ex parte application for stay after filing a notice of appeal from denial of a preliminary injunction was frivolous, intended to harass, or abusing the judicial system. There is no indication that the claim that the clients of a law office were being harmed was frivolous, intended to harass, or abusing the legal system.
7	Motion for Relief from August	Dkt	There is no indication that the motion was

EXHIBIT 1

	23, 2010 Judgments pursuant to Federal Rule of Civil Procedure, Rule 60 (b) and to file an Amended Complaint 8/22/11 (Dkt 156)(Correction filed on 8/23/11 (Dkt 158) , Denied **MOTION #2**	156, 158	frivolous, intended to harass, or abusing the judicial system. In the proceedings Judge Real was using non-existent or extrajudicial sources of information. The motion was based in part on new evidence of the opinions of the California Commission on Judicial Performance (See 615-624, 1633-1645) and change in controlling law through publication of a decision of the California Supreme Court. (See Shalant v. Girard, 51 Cal.4th 1164 (Cal. 2011))
Result: Three ex parte applications, two motions. None were frivolous or intended to harrass			

EXHIBIT 1

***Ringgold-Lockhart et al. v. County of Los Angeles et al* (CV 11-1725)**

8	Complaint-2/28/11 (Dkt 1)	Dkt 1	There is no indication that the complaint is frivolous, intended to harass, or abusing the judicial system.
9	First Amended Complaint-4/6/11 (Dkt 12)	Dkt 12	There is no indication that filing an amended complaint as a matter of right (prior to service) is frivolous, intended to harass, or abusing the judicial system. Using non-existent or extrajudicial sources of information Judge Real entered five separate dismissal orders in CV-09-09215 falsely indicating that the state court had found that Lockhart was not an heir. (BS 1381-1397). The orders made dismissals based on lack of subject matter jurisdiction although no judgment had been entered in the state court on the proceedings initiated by Sankary. The CV-11-01725 does not involve the same issues or parties. Defendant John Clarke was sued in CV-09-09215 in his capacity as court clerk and dismissed from case before service. He was sued in his capacity as court executive officer in CV-11-01725. The issue of disability access did not arise until after CV09-09215 had closed (because the medical circumstances had not yet occurred). When CV-09-09215 was filed there was no or limited access to internal administrative records of the state court. (See Cal. Govt. Code Sec 68106.2 (g) (adopted 7/28/09), Cal. Rules of Ct., Rule 10.500 (adopted 1/1/10)).
10	Plaintiffs' Ex Parte Application For Order To Modify Briefing Schedule Or Modify And Coordinate Briefing Schedule And For Accommodation For	Dkt 23, 24, 26, 36, 42	There is no indication that requesting a modified and coordinated briefing schedule and accommodation for disability is frivolous, intended to harass, or abusing the judicial system

EXHIBIT 1

	Disability- 6/24/11 (Dkt 23, 24, 27, 36, 42) , Denied		**"The list also includes motions, accompanied by medical records, that Ringgold filed requesting a medical accommodation in the briefing schedule—also not frivolous".** Ringgold-Lockhart at 1065
11	Plaintiffs' Ex Parte Application Re: Request For Accommodation For Physical Disability, Relief Pursuant To FRCP 6 (b) And For Reconsideration Of Request For Coordination Of Briefing Hearing Schedule, Denied 7/9/11 (Dkt 46, 48, 51, 53, 54)	Dkt 46, 48, 51, 53, 54	There is no indication that requesting a modified and coordinated briefing schedule and accommodation for disability is frivolous, intended to harass, or abusing the judicial system **"The list also includes motions, accompanied by medical records, that Ringgold filed requesting a medical accommodation in the briefing schedule—also not frivolous".** Ringgold-Lockhart at 1065
12	Plaintiff's Notice Of Motion And Motion For Reconsideration of July 18/2011 Ruling [County/Ordin]-8/20/11(Dkt 66), Denied	Dkt 66 This was a motion for reconsideration before entry of a final order on August 19, 2011 Same as item 13 (See Dkt 85 Page 12 of 37 (#1670)	There is no indication that the motion was frivolous intended to harass, or abusing the judicial system
13	Plaintiffs' Notice Of Motion And Motion To Vacate The August 19, 2011 Order Or Judgment, For New Trial And To Alter, Or Amend The Order Or Judgment, For Reconsideration, And Relief Therefrom[County/Ordin] - 9/11/11 (Dkt 85), Denied **MOTION #1**	Dkt 85 Same as item 12 (See Dkt 85 Page 12 of 37 (#1670)	There is no indication that the motion was frivolous, intended to harass, or abusing the judicial system
14	Plaintiffs' Notice Of Motion	Dkt 88	There is no indication that the motion

EXHIBIT 1

	And Motion To Vacate The August 19, 2011 Order Or Judgment, For New Trial And To Alter, Or Amend The Order Or Judgment, For Reconsideration, And Relief Therefrom[Brown/Harris] -- 10/10/11 (Dkt 88), Denied **MOTION #2**		was frivolous, intended to harass, or abusing the judicial system
15	Plaintiffs' Ex Parte Application for Temporary Restraining Order, Protective Order, and Order to Show Cause re Preliminary Injunction- 11//4/11 (Dkt 95) , Denied **EXPARTE #1**	Dkt 95	There is no indication that the ex parte application, which was unopposed, was frivolous, intended to harass, or abusing the judicial system Note: The TRO also sought injunctive relief and protective order as to retaliation and interference to cases of clients including clients Ali Tazhibi/ASAP in state court proceedings and client Cornelius Turner in the district court. (See Dkt 95 (page 3 of 6)
16	Plaintiffs' Ex Parte Application for Stay and Injunction Pending Appeal in the United States Court of Appeals for the Ninth Circuit Appellate Case No. 11-56973 -11/11/11 (Dkt 108), Denied **EXPARTE #2**	Dkt 108	There is no indication that the ex parte application requesting a stay pending appeal was frivolous, intended to harass, or abusing the judicial system. The appeal was filed on November 8, 2011 before Judge Real's sua sponte ancilliary proceeding and entry of the initial December 6, 2011 order.
Four ex parte applications (two of the ex parte applications were attempting to obtain an accommodation for disability), three motions (one identical motion filed too soon (i.e. before the final order was entered) Result: two ex parte applications, two motions. None were frivolous or intended to harass			

EXHIBIT 2

EXHIBIT 2

State Cases Mentioned In Passing In January 8, 2015 Order

Judge Real mentions in passing 4 unpublished decisions of the state appellate court never giving petitioners notice or opportunity to address the sua sponte use of and judicial notice of the decisions. In all of the matters petitioners are defendants (who are not initiating litigation) except for item 3 which involves the 2007 verified constitutional rights violation which was dismissed without prejudice as to petitioner Ringgold and Lockhart was deemed a non-party without standing.

1. Unpublished, Sankary (Plaintiff) v. Ringgold-Lockhart (Defendant) v., 2009 WL74131 (Jan. 13, 2009)(B202858, B203110, B203814)

- There is nothing in this decision which indicates any matter was frivolous or harassing or intended to abuse the judicial system.
- Petitioner Lockhart was deemed to lack standing in the proceedings initiated by Sankary. The proceedings were without subject matter jurisdiction or publication of notice to obtain in rem jurisdiction over a private trust and without statutory or constitutional to Lockhart.
- Lockhart was never given notice of any settlement or given opportunity to address his interest in the trust.

2. Unpublished, Sankary (Plaintiff)v. Ringgold (Defendant) 2009 WL 236969 (February 18, 2009)(B210169)

- This is the appeal in which the pre-filing order was made in the state court as to petitioner Ringgold
- Petitioner Ringgold had not initiated any litigation in the trial court and was an appealing defendant appearing solely as counsel for trustee. The California Vexatious Litigant Statute had no application to an attorney of record appealing an order on behalf of the trust on a court ordered accounting.

EXHIBIT 2

- By this time Ringgold had filed the 2007 verified constitutional rights violation petition and was unaware of the existence of the Judicial Council Probate Task Force administratively created by the Judicial Council to address tremendous numbers of grievances in the Probate Department of the state court.

- Appeal No. B210169 had nothing to do with any vexatious litigant order.

- Sua sponte Justice Turner (who is a defendant in the federal court) issued an order to show cause identifying the Superior Court as a respondent when there was no original proceeding before the court. It specified that petitioner Ringgold was to show cause why she should not be deemed a vexatious litigant under CCP Section 391 (b)(1)-(2) without a list of cases. (See App. 973, Appeal 11-57247 Vol 4 of Excerpts of Record BS 393-439 & Vol 5 Supplemental Excerpts of Record BS 38-43). The decision rendered was based on a completely different statutory provision (CCP Section 391 (b)(3) and the decision contained information never addressed or mentioned in the order to show cause or proceedings. The is no method to obtain review of the order created in the first instance in the state appellate court which is different that persons who are allowed the mandatory statutory procedure identified in CCP Section 391.1-391.6 which is initiated by a "defendant" in the state trial court. The statute does not contemplate or pertain to claims of "vexatious defendants represented by attorneys".

- As shown by SB 731 there was no jurisdiction for a justice to make a vexatious litigant order and to the present date there is no authority to make such order in the first instance in the court of appeal without a right of review. The California Vexatious Litigant Statute does not apply to attorneys or persons represented by counsel. (See App 610-614.8).

EXHIBIT 2

- Case No. 09-cv-09251 sought prospective and injunctive relief as to the state statute. However, Judge Real erroneous specified there the complaint sought to overturn a state court judgment and also erroneously claimed that the state court had determined Lockhart was not an heir. Both statements were untrue. (See BS 346-349, 379-380, 1381-1397, 1456:4-11).

- After Judge Real dismissed Case No. 09-09251, as a nonparty without standing, the only way petitioner Lockhart could obtain standing and gain access to his inheritance was by filing a motion to vacate the orders obtained by Sankary in the state court proceedings without subject matter jurisdiction. See Estate of Baker (1915) 170 Cal. 578, County of Alameda v. Carleson (1971) 5 Cal.3d 730, 736. Subsequently, the December 6, 2011 order of Judge Real, which was reversed by this court in Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057 (9th Cir. 2014). However, the order has been used to bar Lockhart's access to the court based on Judge Real's December 6, 2011 order. It has also been used as to other clients of the law office and part of the Voting Rights Case when no motion has ever been filed to make any vexatious litigant determination against the client.

3. Unpublished, Ringgold-Lockhart (Plaintiff) v. Sankary (Defendant), 2009 WL3431443 (Oct. 27, 2009)(B212797)

- There is nothing in this decision which indicates any matter was frivolous or harassing or intended to abuse the judicial system.

- Petitioner Lockhart was deemed to lack standing in the proceedings initiated by Sankary. The proceedings were without subject matter jurisdiction or publication of notice to obtain in rem jurisdiction over a private trust and without statutory or constitutional to Lockhart.

- Lockhart was appealing a determination that he had no standing to bring a verified constitutional rights violation petition (including federal claims) in the state court because he was not a party. This

decision specified that Lockhart had no standing to appeal and the merits of the issues were never addressed. As to Ringgold the petition was dismissed without prejudice and re-filed in the federal court. (Case No. 09-09215, Appeal No. 11-57247). A pre-filing injunction barred the actual trustee from seeking relief on behalf of trust and all named beneficiaries in the trust instrument. (Such injunction was void because there was no jurisdictional basis as evident by SB 731).

- Lockhart was never given notice of proceedings of Sankary concerning his interest in the trust and he had not been given an opportunity to address his interest in the trust or the appointment of Sankary outside the procedures of the trust instrument.

- The proceedings initiated by Sankary under Probate Code Section 11700 (erroneously claiming the private trust was a proceeding to administer a decedent's estate) was the basis to claim lack of standing.

4. Unpublished, Sankary (Plaintiff) v. Ringgold-Lockhart (Defendant), 2009 WL 3790555 (November 13, 2009)(B217890, B217816)

- This decision involved the following orders: (a) a May 21, 2009 nunc pro tunc order which adopted an order of a judge who had already been disqualified and had made $40,000 in distributions which excluded petitioners and which authorized attorney fees to Sankary without bond, (b) a May 21, 2009 order which advanced $50,000 in distributions which excluded petitioners and authorized attorney fees to Sankary without bond, (c) May 26, 2009 statement of decision and notice of entry of decision which awarded $100,000 in attorney fees to the Oldman law firm as attorneys in pro per who were representing the Summers Family Trust (which is not a beneficiary of the trust), and (d) an order which made determination regarding entitlement to distributions and allowing payment of distributions without notice without bond and in a manner which conflicted with the trust.

EXHIBIT 2

- The orders at issue in this appeal were rendered while the trial judge (and an undisclosed Probate Task Force member), held in abeyance the verified constitutional rights violation petition filed by petitioners in 2007. During this period she entered the orders at issue in this appeal liquidating the trust without bond and in violation of the statutory stay (due to pending appeals). (See BS 1474-1478).

- Petitioner Lockhart was determined not to have standing and not to be a party to the proceedings (even though he was an heir). This determination is based on the December 16, 2015 distribution order obtained by Sankary under Probate Code Section 11700 which is not applicable to private trusts (but rather administration of decedent's estates). Under Probate Code Section 11700 subject matter jurisdiction cannot be obtained without publication of notice and constitutional notice to all heirs. (See BS 1463-1468). There was no publication of notice, statutory notice, or constitutional notice to petitioner Lockhart.

- The proceedings initiated by Sankary without subject matter jurisdiction or notice are void. See Pioneer Land Company v. Maddux (1895) 109 Cal. 633, 642. This decision is not a basis for imposition of a vexatious litigant order against Lockhart. Instead, it shows the prejudice and bias of Judge Real. This is because there was and still is no final judgment in the matter of the Aubry Family Trust. The federal court never lacked of subject matter jurisdiction. Also, there is bias because in 2009 Judge Real specified he lacked jurisdiction to consider federal laws concerning equal racial civil rights with respect to the customs expressed in the interim decisions of the state court. However, in 2011 after Lockhart had filed valid motions to vacate in the state court, Judge Real sua sponte determined in Case No. 11-cv-01725 that he now had jurisdiction to use those matters to make a vexatious litigant order (never allowing petitioner Lockhart to address the decisions or to be heard or the

EXHIBIT 2

propriety of taking judicial notice). (See BS 1461-2 para 32-33, 1465-6 para 36-37, 1476-7 para 47-8 1396:11-14).

- Under the state court's interpretation, first revealed in this decision, the heirs specified in the trust instrument who have never given notice of *Sankary's petitions* could only obtain standing to obtain access to *their inheritance* by acting as though they were "strangers to the trust" and filing a motion to vacate. See Estate of Baker (1915) 170 Cal. 578, County of Alameda v. Carleson (1971) 5 Cal.3d 730, 736.

- In Case No. 09-cv-09251 Judge Real erroneously specified that there was a final judgment in the state court and that petitioner Lockhart had been determined not to be an heir in his dismissal orders. The dismissal orders barred petitioner Lockhart claims under federal law including under 42 U.S.C. Section 1982 based on the indication of lack of federal subject matter jurisdiction. (See App. 346-349, 379-380, 1381-1397, 1456:4-11).

- After Lockhart filed motions to vacate in the state court, Judge Real then entered the December 6, 2011 vexatious litigant order as to Lockhart. The December 6, 2011 order was then used in the state court to bar Lockhart's access to the court and access to his inheritance. This is because CCP 391 (b)(4) allows such order to be entered in the state court if a federal court has determined a person to be a vexatious litigant.[1] Therefore, the December 6, 2011 order was reversed by this court and Judge Real refused to comply with the mandate of this court by refusing to allow petitioners to participate in the proceedings. He conducted further proceedings without notice as required by this court's mandate to intentionally prevent petitioners from presenting evidence on how the December

[1] However, again there is no law which allows a vexatious litigant determination to be made in the first instance in the state appellate court, when no motion has ever been filed in the trial court or filed in accord with the statutory procedures, or when the person is represented by counsel. (See BS 614.14-614.20, 625-627).

6, 2011 is actually being used and the lack of a basis for the January 8, 2015 order.

EXHIBIT 3

EXHIBIT 3

Cases Mentioned In Footnote 3 of *Ringgold-Lockhart v. County of Los Angeles*
(The footnote Only Pertains to Petitioner Nina Ringgold, Esq. only)

Item No.	Case Identified in Ringgold-Lockhart v. County of Los Angeles page 1064 fn 3	Whether initiated and in what capacity	Reference in Response OSC filed In State Appellate Court See Vol 4 Ex 22 In Appeal 11-57247	Comment
1	*White v. Ringgold* (Oct. 30, 2008) [nonpub. order]	Not initiate the proceeding, appealing defendant	J, K	No finding frivolousness or intent to harass or abusing judicial system
2	*Sankary v. Ringgold* (Aug. 26, 2008, B2020858, B203110, B203814) [nonpub. opn.]	Not initiate the proceeding/defendant, Representative Capacity, Counsel of Record, failure to object could result in statutory waiver of rights. See Cal. Probate Code 16461	G	No finding frivolousness or intent to harass or abusing judicial system. Lack of subject matter jurisdiction or in rem jurisdiction on proceedings created and initiated by Myer Sankary.
3	*Sankary v. Ringgold* (Aug. 26, 2008, B204931) [nonpub. opn.]	Not initiate the proceeding, Representative Capacity, Counsel of Record, failure to object could result in statutory waiver of rights. See Cal. Probate Code 16461	-	No finding frivolousness or intent to harass or abusing judicial system. Lack of subject matter jurisdiction or in rem jurisdiction on proceedings created and initiated by Myer Sankary.
4	*Ringgold v. Sankary* (Aug. 26, 2008, B201148) [nonpub. opn.]	Not initiate the proceeding, Representative Capacity, Counsel of Record, failure to object could result in statutory waiver of rights. See Cal. Probate Code 16461	I	No finding frivolousness or intent to harass or abusing judicial system. Lack of subject matter jurisdiction or in rem jurisdiction on proceedings created and initiated by Myer Sankary.

EXHIBIT 3

5	*Lockhart v. Ringgold* (Mar. 20, 2008, A117178) [nonpub. order]	Not initiate, Defendant/Respondent	_	No finding frivolousness or intent to harass or abusing judicial system
6	*Ringgold v. Superior Court* (Nov. 29, 2007, B203843) [nonpub. order]	Not initiate the proceeding, Representative Capacity, Counsel of Record, failure to object could result in statutory waiver of rights. See Cal. Probate Code 16461	Statutory writ of mandate CCP § 405.39 re: Sankary's ex parte application to expunge lis pendens of actual trustees (required a noticed motion, no noticed motion was ever filed)	No finding frivolousness or intent to harass or abusing judicial system. Lack of subject matter jurisdiction or in rem jurisdiction on proceedings created and initiated by Myer Sankary. Fink v. Shemtov, 180 Cal.App.4th 1160, 1172-1173 (Cal.2010) summary denial of writ petition is not a case finally determined adversely to a person
7	*Ringgold v. Superior Court* (Nov. 29, 2007, B203668) [nonpub. order]		Statutory writ of mandate CCP § 170.3 (d) re disqualification of Judge Aviva Bobb and her decision to strike the verified disqualification statement rather than refer to chair of judicial council per statutory requirements. It was never disclosed and petitioners were unaware that Judge Bobb and Justice Boren were members	No finding frivolousness or intent to harass or abusing judicial system. Lack of subject matter jurisdiction or in rem jurisdiction on proceedings created and initiated by Myer Sankary. Lack of knowledge that Judge Aviva Bobb was member of probate task force and involved in federal litigation regarding grievances in the probate department (and in that federal litigation was co-defendant with attorneys appearing in the Aubry Family Trust (the Oldman Law Firm). Fink v. Shemtov, 180 Cal.App.4th 1160, 1172-1173 (Cal.2010) summary denial of writ petition is not a case finally determined adversely to a person. Statutory writ mandatory to preserve issue of judicial bias on appeal.

EXHIBIT 3

			of the Judicial Council Probate Task Force.	
8	*In re Marriage of Lockhart* (Apr. 24, 2007, A112978) [nonpub. opn.]	Not initiate, Defendant/Respondent	-	No finding frivolousness or intent to harass or abusing judicial system
9	*Ringgold v. Lockhart* (April 24, 2007, A112978) [nonpub. opn.]	Not initiate, Defendant/Respondent	-	No finding frivolousness or intent to harass or abusing judicial system
10	*In re Marriage of Lockhart* (Mar. 20, 2007, A112384, A112635) [nonpub. opn.]	Not initiate, Defendant/Respondent	-	No finding frivolousness or intent to harass or abusing judicial system
11	*Estate of Aubrey* (Mar. 8, 2007, B188156) [nonpub. opn.]	Executor named in will, Representative Capacity, Counsel of Record. Statutory and constitutional right to submit will for probate	L	No finding frivolousness or intent to harass or abusing judicial system. This case confirms the lack of subject matter or in rem jurisdiction on proceedings initiated by Sankary because there does not exist a proceeding to administer a decedent's estate because the African American executor was not allowed to probate the will of the decedent.
12	*Saunders v. Sankary* (Jan. 29, 2007, B188155) [nonpub. opn.]	Not initiate the proceeding, Representative Capacity, Counsel of Record	L	No finding frivolousness or intent to harass or abusing judicial system. Lack of subject matter jurisdiction or in rem jurisdiction on proceedings created and initiated by Myer Sankary.
13	*Lockhart v. Ringgold* (Sept. 28, 2006, A114994) [nonpub. order]	Not initiate, Defendant/Respondent	-	No finding frivolousness or intent to harass or abusing judicial system

EXHIBIT 3

14	*White v. Ringgold* (Sept. 7, 2006, B192914) [nonpub. order]	Not initiate the proceeding, appealing defendant	J, K	No finding frivolousness or intent to harass or abusing judicial system

EXHIBIT 4

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Attorney for Plaintiff Justin Ringgold-Lockhart
And Nina Ringgold

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUSTIN RINGGOLD-LOCKHART, NINA RINGGOLD

Plaintiffs,

v.

COUNTY OF LOS ANGELES, JOHN A. CLARKE, in his Official and Administrative Capacity as Executive Officer of the Superior Court of the County of Los Angeles; ANDREA SHERIDAN ORIN in her Official Capacity as County Counsel; JERRY BROWN in his Official Capacity as Governor of the State of California; KAMALA HARRIS in her Official Capacity as Attorney General of the State of California, and DOES 1-10.

Defendants.

Case No.: CV 11-01725 R (PLAx)

FIRST AMENDED COMPLAINT FOR:

1. Title 42 U. S. C. § 1983
2. Title 42 U.S.C. § 1982, 1985
3. Declaratory and Injunctive Relief (Title 28 U. S. C. § 2201-2202)
4. California Government Code § 11135 et seq.
5. Conversion
6. Equitable Relief and Imposition of Constructive Trust
7. Interference with Prospective Economic Advantage
8. Abuse of Process
9. Invasion of Privacy
10. Intentional Infliction of Emotional Distress
11. Negligent Infliction of Emotional Distress

JURY TRIAL DEMANDED

NOW COMES Plaintiff JUSTIN RINGGOLD-LOCKHART ("Lockhart") and NINA RINGGOLD ("RINGGOLD") to complain against defendants herein as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court over the subject matter of this action is predicated on 28 U.S.C. § 1331 , in that the Plaintiffs' claims arise from violation of rights guaranteed under the First, Fifth, and Fourteenth Amendment of the United States Constitution and laws of the United States. Jurisdiction also predicated on 28 U.S.C. § 1343 (a)(1)-(3) which provides that the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
>
> (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; or
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

2. This Court also has supplemental jurisdiction over state claims asserted herein in that they are so related to the claims within this court's original jurisdiction that they form part of the same case or controversy under Article III of the United States

Constitution.

3. Venue in this district is proper pursuant to 28 U.S.C. § 1391 (b), in that all defendants are believed to either reside or have principal places of business in the City and County of Los Angeles, State of California. Also, a substantial part of the events giving rise to the claims occurred in the City and County of Los Angeles, State of California and the property at issue in located in the City and County of Los Angeles, State of California.

PARTIES

4. Plaintiff Lockhart is an individual who resides in the State of California in the County of Alameda. Lockhart is a beneficiary and interested person with respect to the trusts and estates of Mary Louise Aubry and Robert Aubry ("Aubrys"). Lockhart is an heir of the Aubrys. Lockhart is African American.

5. Plaintiff Ringgold is an individual who resides in the State of California in the County of Alameda. Ringgold is a licensed attorney in the State of California in good standing since 1986. She is a trustee of the Aubry Family trust, an executor under the will of Robert Aubry, and an heir of the Aubrys. Ringgold is African American.

6. The County of Los Angeles is a local public entity in the State of California. ("County").

7. Defendant John A. Clarke is the Executive Officer of the Superior Court of the County of Los Angeles. He is the chief officer who supervises and/or aids in administration including but not limited to the administration affairs concerning employees, county officials (including presiding judges and judges), subordinate or adjunct officials (court adjuncts and appointees), and others involved in the operation,

management, or processing of cases of the Superior Court of the County of Los Angeles including initiation and preparation the record and other documents for civil appeals.

8. Defendant Andrea Sheridan Orin is the County Counsel responsible for enforcing the law within the County of Los Angeles. In that capacity, she must "discharge all the duties vested in the district attorney." Cal. Govt. Code § 26529.

9. Defendant Jerry Brown is the Governor of the State of California. As Governor, he is vested with "the supreme executive power" of the State and "shall see that the law is faithfully executed." Cal. Const. art. § 1.

10. Defendant Kamala Harris is the Attorney General of the State of California. She is the "chief law officer" of the State and has the duty to "see that the laws of the State are uniformly and adequately enforced." Cal. Const. art. 5, § 13. Additionally, Attorney General Harris has "direct supervision over every district attorney" in the State. *Id.* If, at any point a district attorney of the State fails to enforce adequately "any law of the State," the Attorney General must "prosecute any violations of the law." *Id.* Finally, the Attorney General "Shall assist any district attorney in the discharge" of duties when "required by the public interest or directed by the Governor..." *Id.*

11. To the extent applicable, plaintiffs timely filed claims and this action including causes of action under the California Government Claims Act.

NATURE OF THE ACTION

12. Plaintiffs make both facial and as applied challenges to Senate Bill SBX2 11 and California CCP § 391.7 as applied in the state appellate court in the first instance and to persons acting in a representative capacity.

SBX2 11

13. Plaintiffs on behalf of themselves ant and those similarly situated brings this action, in part, based on 42 U.S.C. § 1983 seeking declaratory and injunctive relief against enforcement of Senate Bill SBX2 11 introduced to the California State Legislature by Senator Steinberg on February 11, 2009. (Attached as Exhibit A this complaint).

14. On October 10, 2008 the California Court of Appeal for the Fourth Appellate District in Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (Cal. 2008) ("Sturgeon I") held that the compensation which the County of Los Angeles had been paying the judges of the Superior Court of the County of Los Angeles was unconstitutional under Article VI § 19 of the California Constitution.

15. Article VI § 19 of the California Constitution states as follows:

> "SEC. 19. The Legislature shall prescribe compensation for judges of courts of record.
>
> A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision."

16. Sturgeon I found that as of January 1, 2007 that the California Legislature had set salaries of superior court judges at $172,000 and that additional, supplemental benefits paid by the County raised that compensation by $46,346, or approximately 27 %, to $218,346 in 2007. Sturgeon I at 635-636. Sturgeon also expressly found that the judges of the Superior Court of the County of Los Angeles were treated as salaried employees of the county. Id. at 635.

17. After Sturgeon I was decided SBX2 11 was enacted by emergency legislation on February 20, 2009. Section 5 of SBX2 11 contains a provision which grants retroactive immunity to the County of Los Angeles and the Superior Court of the County of Los Angeles and its judges for conditions determined by Sturgeon I to be unconstitutional. Section 5 states as follows:

> "*Notwithstanding any other law,* no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized by law." (Emphasis added)

18. Section 5 purports to grant retroactive immunity notwithstanding the United States Constitution or federal law, and in disregard of whether the relief sought by the aggrieved person is under the United States Constitution or federal law, and it purports to amend or revise the California Constitution without the required constitutional procedures.[1] As described herein plaintiffs were adversely impacted during the periods in which the unconstitutional condition existed. Plaintiffs will suffer irreparable harm because they will be unable to recover damages based on claims of immunity including but not limited to those asserted under Section 5 of SBX2 11. See California Pharmacists Ass'n v. Maxwell-Jolly, 563 F.3d 847, 851-852 (2009)(plaintiffs irreparably harmed and entitled to injunctive relief when they demonstrate they would be unable to recover damages due to claims of immunity).

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[1] See Legislature v. Eu, 54 Cal.3d 592, 506 (Cal. 1991).

19. The retroactive immunity provision of Section 5 of SBX2 11 is not readily accessible to the public because it is omitted from the California Government Code.

20. There was a subsequent decision decided December 28, 2010 entitled Sturgeon v. County of Los Angeles, 191 Cal.App.4th 344 (Cal. 2010) (Sturgeon II). However, the state court in Sturgeon II completely omits reference to the retroactive immunity provision of Section 5 of SBX2 11.

21. California Constitution Article VI § 17 prohibits judges from accepting public employment or office. See also Abbott v. McNutt, 218 Cal. 225 (Cal. 1933). California Article VI § 17 states:

> "SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected *is ineligible for public employment or public office* other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. *Acceptance of the public office is a resignation from the office of judge.*
>
> A judicial officer may not receive fines or fees for personal use.
>
> A judicial officer may not earn retirement service credit from a public teaching position

22. California Government Code § 29320 provides that officers of the county include the Superior Court. California Code of Civil Procedure § 38 states that a judicial district as it relates to the Superior Court means the County. Liability for nonperformance or

malperformance of County Officers (including judges of the Superior Court) attaches to the official bond of the officer and the premium is paid for by the County. Cal. Govt. Code § § 1505, 1651.

23. Sturgeon I confirms that judges of the Superior Court are County employees and California Government Code § 29320 provides that officers of the county include the superior. Therefore, under both California constitutional and statutory authority there was a automatic resignation of judges during the period in which plaintiffs were harmed.

24. During the period of injuries to plaintiffs there was a constitutional resignation of judges and an unconstitutional condition existed under Sturgeon I.

25. Plaintiffs contend that Lockhart as an heir of the Aubrys was deprived of notice of the proceedings or that the proceedings in which such determination was made was not a valid state court proceeding. Due to the self effectuating resignation given under California Constitution Article VI § 17, and before proceedings were conducted, there was a requirement of disclosure of the unconstitutional condition to litigants and the public and consent by the litigants involved in the proceedings. See Rooney v. Vermont Investment Corporation, 10 Cal.3d 351 (Cal. 1973) (commissioner did not have power to act as temporary judge absent stipulation of parties and even if he had been authorized to render order of judgment that it was improper because the stipulation did not set out all essential terms of the judgment without notice of hearing). Plaintiffs did not consent or stipulate to the unconstitutional condition or proceedings conducted by county officials and or employees or judges subject to constitutional resignation.

26. Plaintiff Lockhart is being deprived access to his inheritance by a judge subject to constitutional resignation who appointed a trustee without bond and without notice to

Lockhart. Also, he his being deprived of access to his inheritance by a judge subject to constitutional resignation and who rendered a decision on a Probate Code § 11700 petition filed by the trustee (acting without bond) and when there was not constitutional or statutory notice. Consideration of a Probate Code § 11700 petition required appointment of a personal representative, notice of all known and reasonable ascertainable heirs, and admission of a will into probate.

California Code of Civil Procedure § 391.7

27. Plaintiffs have a constitutionally protected legal and property interest in the persons designated as owning the intangible property right in the power of appointment and discretion in a private family trust instrument. Family member trustees were are named as owning this intangible property right in the trust instrument and final orders dated October 14, 2003. These orders are now governed under the doctrines of collateral estoppel and res judicata. Plaintiffs have a direct property interest in the named trustees specified in the trust instrument maintaining (1) the legal right to act in legal proceedings in a representative capacity and (2) the power to control and dispose of trust property under the express terms of the trust instrument.

28. A trustee acting in a representative capacity may only appear in a legal proceeding through an attorney. See Ziegler v. Nickel (1998) 64 Cal.App.4th 545. An attorney is not a party in the proceedings and also acts in a representative capacity.

29. County official and employees as described above, through a nonappealable order appointed a trustee without bond who is liquidating a private family trust. The primary unencumbered and revenue generating real estate assets of the trust were sold in

one of the worst real estate markets in United States history. While and the named trustee and counsel of record (plaintiff Ringgold) was using proper procedures to attempt to prevent the adverse sale she was determined to be a vexatious litigant in the first instance in the California Court of Appeal. The determination was made when motion was ever filed in the state trial court in accord with the statutory due process procedures mandated by statute and it was made in the first instance in the appellate court to a named trustee and counsel of record when there would be no opportunity for appellate review. See De Long v. Hennessey, 912 F.2d 1144 (9th Cir. 1990); Weissman v. Quail Lodge Inc. (1999) 179 F.3d 1194, 1197, In re Natural Gas Anti-Trust Cases I, 137 Cal.App.4th 387 (Cal. 2006).

30. CCP § 391.7 is not applicable to persons who are acting in propria persona.

31. Lockhart is within a class of beneficiaries whose current rights vest by exercise of discretion by the trustee named in the trust instrument. Through application of CCP § 391.7 to a name trustee designated to act and to own the intangible property right of appointment and discretion directly impairs Lockhart's property interest in the trust and all beneficiaries and heirs of the youngest generation. This class of beneficiaries and heirs and the trustee designated with ownership of the power of discretion to make distributions to such class of beneficiaries and heirs are impacted by application of CCP § 391.7. Plaintiff Ringgold is the only living trustee named in the trust instrument and confirmed by final order dated October 14, 2003. The premature liquidation of the private trust divests an entire generation of heirs without notice.

32. CCP § 391.1 states:

> "In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the

court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant"

33. CCP § 391.7 in part states:

" (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3."

34. CCP § 391.7 presumes that a vexatious litigant determination has already been made. (....the court may, on its own motion or the motion of any other party, enter a prefiling order which prohibits *a vexatious litigant* from...). In other words, it presumes that a due process motion has already taken place in the trial court. This process provides a right of appellate review.

35. When a defendant seeks to require a plaintiff to post security under CCP § 391.1 he has the burden to establish the requirements of the statute. Under CCP § 391.7 a

presiding judge may condition the filing of litigation upon the furnishing of security for the benefit of a defendant only in the manner specified in CCP § 391.3. CCP § 391.3 only allows posting of security after hearing on evidence of a motion under CCP § 391.1. So again, application of CCP § 391.7 is based on a statutory due process motion taking place in the trial court. (The California Vexatious Litigant Statute is attached as Exhibit B to this complaint).

36. For a single justice of the state appellate court to render a determination of whether an appeal has merit and has been filed for purposes of harassment or delay when no statutory due process motion has been filed under CCP § 391.7 (b) violates both sections 3 and 14 of Article VI of the California Constitution.

Article VI, section 3 states:

> "The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment."

Two qualified justices are necessary to render a decision on the merits in the Court of Appeal. People v. Castellano (1978) 79 Cal.App.3d 844, 862. Permitting the merits of a pending or future appeal to be resolved directly or indirectly by the presiding justice alone violates or impairs this constitutional requirement. Article VI, section 14 of the California Constitution requires that "[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated."

37. Plaintiffs contend that CCP § 391.7 is being applied as a penalty for raising legitimate grievances concerning discrimination and operation of the Superior Court of

the County of Los Angeles probate department.

BACKGROUND

38. The Aubrys are African American. In the 1940's and during their lifetime they were adversely impacted by restrictive covenants in the County of Los Angeles. They were disappointed by their inability to purchase the home of their choice which happened to be in a White neighborhood. They became committed to residing and improving the predominately African American community of South Central Los Angeles. They wisely made investments in income property and other income producing investments. They lived in apartment buildings which they owned which and these properties were free and clear of any lien or mortgage at the death of the Aubrys. Since the Aubrys did not have children they developed the Aubry Family Trust in 1987. The Aubry Family Trust is an extremely detailed private family trust which was intended to provide income for family members and their children and to expand income and principal for future generations. The Aubrys are the functional equivalent of the paternal great grandparents of Lockhart.

39. After Mary Louise Aubry died on October 3, 1995 her portion of the Aubry Family Trust became irrevocable. After the death of Robert Aubry on September 26, 2002 Nina Ringgold and Mary Louella Saunders became successor trustees. Final orders dates October 14, 2003 were entered confirming this trusteeship and are now governed by the doctrines of res judicata and collateral estoppel. Mary Louella Saunders is now deceased.

40. As a private inter vivos trust the Aubry Family trust is not subject to court supervision. (Cal. Probate Code § 17300-17302). By unconstitutional rules, customs, policies, and procedures of the Superior Court of the County of Los Angeles, without a petition to remove existing trustees, the Superior Court enforced a trustee qualification

rule that the trustee of the private family trust had to be a lawyer or retired judge known to the Superior Court judge. This rule is enforced through a nonappealable order dated March 10, 2005 which appointed a trustee without a bond and without notice to Lockhart. The order was entered during the pre Sturgeon I era by county officials and judges impacted by self effectuating resignations under Article VI § 17 of the California Constitution. It was also entered during periods in which the members of the African American community and the public at large were raising substantial grievances with both the Superior Court of the County of Los Angeles and the County. The trust instrument expressly provides that the power of appointment and discretion to be exercised by the trustee of the Aubry Family Trust, including the power to be exercised on behalf of the younger and future class of beneficiaries such as Lockhart, rests with the designated family member trustees.

41. A study conducted by the PEW Charitable Trusts entitled *Economic Mobility of Black and White Families* revealed startling statistics of substantial concern in the African American community and to Lockhart who is African American. The study determined that 31 percent of African American children born to parents in the middle-income group have family income greater than their parents, compared to 68 percent of white children in the same circumstance. The study further found that nearly half (45%) of African American children in the middle-income group fall to the bottom of the income distribution in one generation, compare to only 16 percent of white children.

42. The pervasive and systemic unconstitutional qualification rules and customs of the probate department of the Superior Court of the County of Los Angeles disregard the express terms of private trusts thereby contributing to the trend of devastating loss of

wealth in the African American community. The trust instrument defines the qualifications and persons who are the owners of the trust estate. The enforcement of the qualification rules and customs of the Superior Court which disregard the trust instrument are similar in effect to the previous judicial enforcement of restrictive covenants based on race that adversely impacted the Aubrys. This is because they prohibit the right to own and dispose of property. The rules and customs of the Superior Court take the property right in the power of appointment and discretion expressly defined by the trust instrument to belong to African American family members and transfers that property right to White court appointees and attorneys who have no relation to the family or interest in transferring wealth to future generations. This taking of property is achieved without any petition to remove the existing trustee. The *alleged* issue of "trustee qualification" or "abandonment of position of trusteeship" or "concern about disputes" and is comparable to other discriminatory qualification devices in the voting rights context. (literacy tests, property qualifications, good moral character tests).

43. After the court appointed a trustee without bond and without a petition to existing trustees, the court appointed trustee filed a petition under Probate Code § 11700. However, in order to obtain subject matter jurisdiction to determine a Probate Code § 11700 petition requires publication of notice. Lockhart was not given notice of the Probate Code § 11700 petition. Also, a Probate Code § 11700 requires appointment of a personal representative, admission of a will to probate, notice to all known heirs whose interest would be affected by the petition. None of this had occurred. Probate Code § 11702 mandates that an interested person such as Lockhart is to be allowed to file a written statement of his interest in the estate. The petition filed by the court appointed trustee,

still acting without bond, sought approval of a partial settlement agreement which eliminated or reduced plaintiffs' interest. The petition did not include the actual settlement agreement in the actual petition filed with the court and plaintiffs were not provided with a copy. The resulting order dated December 16, 2005 approved an undisclosed partial settlement agreement which eliminated or reduced plaintiffs' interest and is functioning to terminate the trust intended to benefit a future generation of heirs and to provide income to other beneficiaries during their lifetime (if they elect such income). See Probate Code § 15403. The order was entered during the pre Sturgeon I era by county officials and judges impacted by self effectuating resignations under Article VI § 17 of the California Constitution.

44. The court appointed trustee sold assets of the trust complying with the mandatory publication requirements of Government Code § 6063a or notice to plaintiffs. See Hellman v. Mertz (1896) 112 Cal. 661, 666.

45. Although there has never been a petition to remove trustees of the Aubry Family Trust and the trust instrument specifies that the trust does not terminate until almost the year 2023 plaintiffs have been deprived of property by the repeated petitions filed by the court appointed trustee to liquidate the trust, to pay his attorney's fees and trustee fees, and to make inequitable distributions which exclude plaintiffs. The trustee fees and attorneys' fees exceed the sum allowed under Probate Code § 10810.

46. Plaintiffs contend CCP § 391.7 is being applied, in the first instance in the state appellate court without the mandated statutory due process motion, to shield appellate review of meritorious federal constitutional claims and to target appeals in which

FIRST CAUSE OF ACTION
Title 42 U. S. C. § 1983
(All Defendants)

47. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 46 above.

United States Constitution –Fourteenth Amendment
(Equal Protection)

48. There is neither a rational basis for nor a compelling state interest in differential compensation between state trial court judges based on whether the county or court in which they sit pays supplemental benefits particularly when the supplemental benefits paid by County were declared to be unconstitutional.

49. The California Constitution Article VI 18 prohibits state court trial judges in the County of Los Angeles from acting as County officials or as employees of the County thereby causing a self effectuating resigning of a judge. Thus, any proceeding take place before the judge as a County employee or official required disclosure and written consent.

50. In addition to not obtaining consent from the parties the proceedings were not conducted in a manner to obtain subject matter jurisdiction by publication of notice.

51. Property belonging to the trust and the subject of Lockhart's inheritance was sold without Lockhart's knowledge or consent and in proceedings in which there was not compliance with the mandatory requirement for publication of a sale.

52. Plaintiffs were denied due process by enforcement of a judicial rule which makes discriminatory qualification criteria for a trustee of a private family trust by requiring the named trustee to be a lawyer known to the judge or a retired judge which is

contradictory to the express language of the trust. Such criteria adversely impacts African American family members named in the trust who may or may not be lawyers but don't happen to be known by the judge.

53. Persons designated to act in a representative capacity on behalf of a trust or estate are being deprived of fair access, equal protection, and due process by application of California Code of Civil Procedure § 391.7 in the first instance in a state appellate court without the required due process motion or hearing in trial court.

United States Constitution - First and Fourteenth Amendment
(Freedom of Expression)

54. Plaintiffs have been deprived their constitutional rights under the First Amendment of the United States Constitution by conduct including but not limited to:

a. Suffering penalties and deprivation of property for making grievances and asserting right of free speech as to the enforcement of discriminatory rules, customs, policies, and procedures of qualification of trustees of private family trusts which require the trustee to be a lawyer known to the judge or a retired judge which is contradictory to the express language of the trust. Such criteria adversely impacts African American family members named in the trust even though they are lawyers and unknown to the judge. Such criteria strips the named executors and trustees in the will and trusts of Mary Louise Aubry and Robert Aubry of the property interest in the power of appointment and access to trust income and principal.

b. Suffering penalties for grievances including (1) application of the California Code of Civil Procedure 391.7 without any hearing or motion being filed by a defendant

in the trial court and when this provision directly impacts Lockhart's interest in a private trust, (2) being placed in jail for not executing an indemnity agreement in favor of the court appointed trustee appointed without bond, and (3) being refused accommodations for disabilities and access t funds needed for medical, health, and other needs.

c. Suffering penalties for seeking defensively seeking appellate review of a state court orders obtained by a trustee appointed by the court without bond and for defensively asserting objections to the termination of an income producing private family trust in violation of its express terms.

d. Suffering penalties for raising grievances about and court proceedings.

United States Constitution Fifth Amendment
(Deprivation of Property Without Due Process of Law and Taking of Property without Just Compensation)

55. Plaintiffs have been deprived his constitutional rights under the Fifth Amendment of the United States Constitution by conducted including but not limited to:

a. Being deprived of both liberty and property without due process of law and for taking of property without just compensation. The transfer of the power of appointment and discretion of trust and/or estate property against the express terms of the trust and wills without a petition to remove is a taking with direct pecuniary loss to plaintiffs.

b. Being denied due process by enforcement of a judicial rule which makes discriminatory qualification criteria for a trustee of a private family trust by requiring a trustee to be a lawyer known to the judge or a retired judge which is contradictory to the express language of the trust. Such criteria adversely impacts African American family members named in the trust even though they are lawyers and no known to the judge.

Such criteria strips the named executors and trustees in the will and trusts of Mary Louise Aubry and Robert Aubry of the property interest in the power of appointment and access to trust income and principal.

c. By being deprived of access to the court under California Code of Civil Procedure § 391-391.7 without any hearing or motion being filed by a defendant in the trial court and refusal of reasonable accommodation for disabilities under California Rule of Court Rule 1.100.

e. By not affording due process according to express constitutional, statutory, or common law authority within the State of California.

f. By failing to provide adequate notice of the proceedings prior to divestment of liberty and property interests.

56. For the foregoing reasons, and others, SBX211 and CCP§ 391.7 as applied in the first instance in a state appellate court and to persons acting in a representative capacity is unconstitutional under the United States Constitution. These statutes cause plaintiffs and those similarly situated to be subjected to the deprivations of rights, privileges, and immunities secured to them by the Constitution and laws of the United States. Therefore, these statutory provisions of the State of California constitute a deprivation of rights actionable under 42 U.S.C. § 1983.

57. Plaintiffs have been injured and will continue to suffer injuries and damages and requests declaratory and injunctive relief. Plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

SECOND CAUSE OF ACTION
Title 42 U.S.C. § 1982 & 1985
(All Defendants)

58. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 57 above.

59. All citizens of the United States have the same right as enjoyed by white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property. Defendants were aware of the substantial grievances made by members of the African American community and the community at large concerning the discriminatory conduct, rules, policies, and practices in the Superior Court of the County of Los Angeles probate department and other departments (i.e., civil appeals unit, court reporter services unit). Defendants were also aware that there was not sufficient information available to the public concerning the internal administrative operation of the Superior Court of the County of Los Angeles in order to determine the proper method to pursue relief by legal action against the proper entities. In addition, defendants acted to conceal the retroactive immunities provision of SBX211, in part because they were aware of the grievances of the public which had been made about the operation and funding of the Superior Court of the County of Los Angeles. The retroactive immunity provisions of SBX2 11 has substantial impact on members of the African American community because they are the portion of the public substantially harmed by the rules, customs, and policies implements in the Superior Court of the County of Los Angeles probate and other departments.

60. There is no rational basis for exclusion of the retroactive immunity provisions of SBX2 11 from being published in the California Government Code given its substantial impact on the general public.

61. The plain language of the California Constitution prohibits judges of the Los Angeles Superior Court for the County from Los Angeles from accepting public employment and being county officials and defendants are charged with the duty to understand and enforce the California Constitution.

62. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

63. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

64. As to the County, Clark, Sheridan, and Harris said defendant's acts were reckless or with a callous indifference to the federally protected rights of the plaintiffs. Also, defendant's acts were malicious and were willful and oppressive and justify an award of punitive damages according to proof particularly in light of the fact that they are charge with the obligation to protect the public. There could be no legitimate public interest in attempting to provide retroactive immunity even to actions maintained under the United States Constitution and federal law.

65. Plaintiffs seeks declaratory and injunctive relief against these defendants.

THIRD CAUSE OF ACTION
Declaratory and Injunctive Relief
Title 28 U. S. C. § 2201-2202
(Against All Defendants)

66. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 65 above.

67. There is an actual controversy within this court's jurisdiction in which the plaintiffs require immediate declaration of the rights, legal duties, and legal relations, duties and obligations and a controversy with respect to SBX2 11 and application of CCP § 391.7 in the first instances in a state appellate court. Plaintiffs request all necessary or proper declaratory and injunctive relief to restore his property interest and protect his legal rights. Plaintiffs request that there the court order injunctive relief to prohibit the continuation of divesting of property.

68. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

FOURTH CAUSE OF ACTION
California Government Code § 11135 et seq.
(All defendants)

69. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 68 above.

70. Plaintiffs have been denied full and equal access to proceedings, programs, activities, and services provided by or conducted in the Los Angeles Superior Court of the County of Los Angeles. Plaintiffs have been subjected to discrimination in the manner

and method in which the probate and other department conduct its affairs. The discrimination is systemic and pervasive covering various related departments essential to meaningful and fair access to the court.

71. The Superior Court receives funds from both the county and the state operate the programs and activities at issue.

72. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

73. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

74. Defendant's acts were reckless or with a callous indifference to the federally protected rights of the plaintiffs. Also, defendant's acts were malicious and were willful and oppressive and justify an award of punitive damages according to proof particularly in light of the fact that they are charge with the obligation to protect the public.

75. Plaintiffs seek declaratory and injunctive relief against these defendants.

76. Plaintiffs seek the restitution and to provide information and training and legal services in the African American community regarding the rights of family member trustees of inter vivos trust and that portion of the funds from the Sargent Shriver Civil Counsel Act or the California Community Services Block Grant Program be made available.

FIFTH CAUSE OF ACTION
Conversion
(County, Clarke, Sheridan)

77. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 76 above.

78. Plaintiffs owned or had a right to possession of property of the trust. The proceedings conducted without consent by plaintiffs or in a manner consistent with the California Constitution deprived plaintiffs of access to property, their inheritance, to the lawful possession of the intangible right of the power of appointment and discretion owned by the trustees named by the Aubrys in order to benefit a young generation of heirs such as Lockhart.

79. The defendants' fail to act or implement reasonable procedures, policies, and procedures, including but not limited, to prohibiting supplemental compensation to judges which has been deemed unconstitutional, handling and verification of bond of appointees, verification of notice of publication (necessary for subject matter jurisdiction or jurisdiction to sell property), and managing the affairs of the probate department, court reporter services department, and other departments. Plaintiffs did not consent to this conduct and were harmed by this conduct.

80. Defendants was a substantial factor in the harm to plaintiffs.

81. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

82. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

SIXTH CAUSE OF ACTION
Equitable Relief and Imposition of Constructive Trust
(County, Clarke, Sheridan)

83. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 82 above.

84. There is no plain, speedy, or adequate remedy at law. The matters are of broad interest in this district because African American families are being deprive the right to property by the erroneous application of rules, policies, and procedures which allow the family member designated with the power of appointment of trust and estate property from exercising discretion and maintaining ownership of property. The result is a loss of wealth and transfer of this wealth to outsiders.

85. Plaintiffs seek equitable relief by barring defendants from proceeding and/or continuing in their actions. A constructive trust should be established in order to recover the losses to the trust and monies wrongfully transferred.

86. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

87. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

SEVENTH CAUSE OF ACTION
Interference With Prospective Economic Advantage
(County, Clarke, Sheridan)

88. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 87 above.

89. Defendants were aware of the that there were persons who would not consent to proceedings before a judge who had been deemed resigned under California Constitution Article VI § 18 and that there persons such as Lockhart who would object. Defendants cause a breach of trust, premature termination of the trust, and to breach the contracts with respect to the trust in proceeding which were void as a matter of law. Defendants conduct caused a breach or premature termination of the income producing trust and conducts of the trust.

90. Defendants' conduct was a substantial factor in causing plaintiffs' harm.

91. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

92. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

EIGHTH CAUSE OF ACTION
Abuse of Process
(County, Clarke, Sheridan)

93. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 92 above.

94. Defendants initiated legal proceedings for an improper move and in a manner

which was not authorized by law. These legal proceedings have unduly caused undue expense and burden to plaintiffs.

95. The proceedings were not conducted in the proper exercise of an official duty or conducted with proper constitutional authority.

96. The matters did not involve communicative conduct in a proper proceeding authorized by law and were not privileged.

97. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

98. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

NINTH CAUSE OF ACTION
Invasion of Privacy
(County, Clarke, Sheridan)

99. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 98 above.

100. Plaintiffs had a reasonable expectation of privacy. Defendants intentionally intruded in the privacy of plaintiffs. Such intrusion would be highly offensive to a reasonable person. Defendants' conduct was a substantial factor in causing plaintiffs' harm.

101. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

102. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

TENTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(County, Clarke, Sheridan)

103. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 102 above.

104. Defendants engaged in outrageous conduct. Such conduct was continuous, extreme, intentional, and outrageous and said conduct was done for the purpose of causing plaintiffs to suffer humiliation, mental anguish and emotional distress and was done with wanton and reckless disregard of the probability of causing such distress.

105. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

106. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

ELEVENTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress
(County, Clarke, Sheridan)

107. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 106 above.

108. Defendants engaged in conduct with caused plaintiffs to suffer serious emotional distress. The conduct of defendants was negligent and was a substantial factor

in causing plaintiffs serious emotional distress.

109. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

110. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial of all issues so triable.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For actual, general, compensatory, and consequential damages in an amount to be proven at trial;
2. For costs of suit;
3. For punitive damages in a sum sufficient to punish and set an example of defendant;
4. For restitution of all money, property, profits and other benefits and any thing of value that defendant received preceding this lawsuit;
5. For discharge of all fees and costs which are liens based on plaintiffs' fee waiver in the proceedings of the Aubry Family Trust;
6. For temporary and permanent declaratory, injunctive relief, and equitable relief;
7. For interest at the rate of ten percent (10%) per annum;
8. For reasonable attorney's fees and costs;
9. For such other and further relief as this Court deems just and proper.
10. For declaratory and injunctive relief;

11. For equitable relief;

12. For reasonable attorney's fees and costs;

13. For such other and further relief as this Court deems just and proper.

Dated: February 27, 2011

LAW OFFICE OF NINA RINGGOLD

By: Nina Ringgold

Nina Ringgold, Esq.
Attorney for the Plaintiffs

Exhibit A

BILL NUMBER: SBX2 11 CHAPTERED 02/20/09

CHAPTER 9
FILED WITH SECRETARY OF STATE FEBRUARY 20, 2009
APPROVED BY GOVERNOR FEBRUARY 20, 2009
PASSED THE SENATE FEBRUARY 14, 2009
PASSED THE ASSEMBLY FEBRUARY 15, 2009
AMENDED IN SENATE FEBRUARY 14, 2009

INTRODUCED BY Senator Steinberg

FEBRUARY 11, 2009

An act to add Sections 68220, 68221, and 68222 to the Government Code, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

SB 11, Steinberg. Judges: employment benefits.

The California Constitution requires the Legislature to prescribe compensation for judges of courts of record. Existing law authorizes a county to deem judges and court employees as county employees for purposes of providing employment benefits. These provisions were held unconstitutional as an impermissible delegation of the obligation of the Legislature to prescribe the compensation of judges of courts of record.

This bill would provide that judges who received supplemental judicial benefits provided by a county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date. The bill would authorize a county to terminate its obligation to provide benefits upon providing 180 days' written notice to the Administrative Director of

the Courts and the impacted judges, but that termination would not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The bill also would authorize the county to elect to provide benefits for all judges in that county. The bill would require the Judicial Council to report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

This bill would provide that no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of the bill on the ground that those benefits were not authorized under law.

This bill would provide that nothing in its provisions shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to address the decision of the Court of Appeal in Sturgeon v. County of Los Angeles (2008) 167 Cal.App.4th 630, regarding county-provided benefits for judges.

(b) These county-provided benefits were considered by the Legislature in enacting the Lockyer-Isenberg Trial Court Funding Act of 1997, in which counties could receive a reduction in the county's maintenance of effort obligations if counties elected to provide

benefits pursuant to paragraph (l) of subdivision (c) of Section 77201 of the Government Code for trial court judges of that county.

(c) Numerous counties and courts established local or court supplemental benefits to retain qualified applicants for judicial office, and trial court judges relied upon the existence of these longstanding supplemental benefits provided by the counties or the court.

SEC. 2. Section 68220 is added to the Government Code, to read:

68220. (a) Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

(b) A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with 180 days' written notice. The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county.

SEC. 3. Section 68221 is added to the Government Code, to read:

68221. To clarify ambiguities and inconsistencies in terms with regard to judges and justices and to ensure uniformity statewide, the following shall apply for purposes of Sections 68220 to 68222, inclusive:

(a) "Benefits" and "benefit" shall include federally regulated benefits, as described in Section 71627, and deferred compensation plan benefits, such as 401(k) and 457 plans, as described in Section 71628, and may also include professional development allowances.

(b) "Salary" and "compensation" shall have the meaning as set forth in Section 1241.

SEC. 4. Section 68222 is added to the Government Code, to read:

68222. Nothing in this act shall require the Judicial Council to

increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

SEC. 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.

SEC. 6. The Judicial Council shall report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Exhibit B

CALIFORNIA CODE OF CIVIL PROCEDURE
PART OF CIVIL ACTIONS
TITLE 3A VEXATIOUS LITIGANTS
SECTIONS 391-391.7

391. As used in this title, the following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(c) "Security" means an undertaking to assure payment, to the

party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

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

391.2. At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

391.3. If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

391.4. When security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

391.6. When a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

391.7. (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious

litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, "litigation" includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

EXHIBIT 5

Information Pertaining to Cases

Nazie Azam, Related: a, b, c, d

a. *Arising from In re Bankruptcy of Nazie Azam* (U.S. Bankruptcy Court, Central District, 13-bk-14339-TA), Pending appeals (USCA 9th Cir. 14-55523); BAP 9th Cir. 13-1345, 13-1538 (consl) **[Removal** Superior Court of the County of Orange Case No. 30-2012-00545071,30-2013-00641238, 30-2013-00650021)**]**, BAP 9th Cir. 14-1136; USDC (C.D. Cal.); 13-cv-01954-JLS **[Stayed 4.4.14]**, 14-cv-00074 **[Stayed 2.4.14]**, proceedings continuing in state court in violation of bankruptcy remand order or disclosure and consent in state court Cal. Court of Appeal 4th Dist. Div 4 (unassigned), Cal. Supreme Court (Case No. S225212) and any related proceedings;

b. *Nazie Azam v. Ruzicka and Wallace LLP* (USDC (C.D. Cal.) 14-cv-00226 JLS-RNB and any related proceedings;

Nazie Azam and Qadeer Azam, Related: a, b, c, d

c. *Nazie Azam, Qadeer Azam v. Jerry Brown et al.* (USDC (C.D. Cal.) 14-cv-01812 CJC-JCG and any related proceedings;

d. *Nazie Azam, Qadeer Azam v. Coldwell Banker Residential Brokerage* Company (USDC (C.D. Cal.) 15-cv-00017 AG-AN) and any related proceedings;

Nathalee Evans and Dorian Carter, Related: e, f, g, h, i

e. *Thomas McCullough, Jr. v. Nathalee Evans as Named Trustee, Dorian Carter* (USCA 9th Cir. Case No. 13-55351, 13-55349 (Consl), USDC (C.D. Cal.) 12-cv-8433- MWF-E, 12-cv- 10303-MWF-E), **[Removal** Superior Court of the County of Los Angeles Case No. SP008233**]** and any related proceedings;

f. *Dorian Carter v. Tracy Sheen, Nathalee Evans* (USCA 9th Cir. Case No. 13-55049, USDC (C.D. Cal.) 12-cv-10300 PA-MRW) **[Removal** Superior Court of the County of Los Angeles Case No. BC458090, Cal. Court of Appeal 2nd Dist. No. B254019**]** and any related proceedings;

g. *Nathalee Evans, Dorian Carter v. Jerry Brown et al* (USCA 9th Cir. Case No. 14-56274, USDC (C.D. Cal.)14-cv-00285-R-PLA) and any related proceedings;

h. *Trust of Quinlock Sheen*, Superior Court of the County of Los Angeles Case No. BP092979 and any related proceedings;

i. *Related Bankruptcy, In re Bankruptcy of Tracy Sheen* (U.S. Bankruptcy Court, Central District, 12-bk-30914-BR)**[Closed]**.

ASAP Copy and Print, Ali Tazhibi, Law Offices of Nina R. Ringgold,

Related: j, k, l, m, t

j. *Canon Business Solutions, Inc.et al. v. ASAP Copy and Print et al.* (USCA 9th Cir. Case No. 13-55307, 13-55803 (Consl), USDC (C.D. Cal.) 12-cv-10165 ABC-PJW) [**Removal** Superior Court of the County of Los Angeles Case No. PC043358**]**, and any related proceedings;

k. *ASAP Copy and Print et al v. Jerry Brown et al.* (USCA 9th Cir. Case No. 14-56603, (USDC (C.D. Cal.)14-cv-03688-R-PLA)and any related proceedings;

l. *California Court of Appeal Second Appellate District et al v. ASAP Services Inc. et al* (USDC (C.D.Cal.)15-cv-01261 R-E) **[Removal** Cal. Court of Appeal No. B261285, Superior Court of the County of Los Angeles Case No. PC043358**]**, and any related proceedings;

m. *TBF Financial I, LLC v.* ASAP Copy and Print (and Cross-complaint), Superior Court of the County of Los Angeles No. PC056074 and any related proceedings;

Cornelius Turner, Marian Turner, Lisa Turner, Law Offices of Amy P. Lee, Law Offices of Nina R. Ringgold, Related: n, o, p, t

n. *Hartford Casualty Insurance Co. et al v. Marian Turner et al* (USCA 9th Cir. Case Nos. 13-55039, USDC (C.D. Cal) 12-cv-10434-PA-E) **[Removal** Superior Court of the County of Los Angeles Case Nos. BC463850,

BC474698, BC463639, Cal. Court of Appeal 2nd Dist. B248667, B250084, B256765**]** and any related proceedings;

o. *Hartford Casualty Insurance Co. et al v. Marian Turner et al* (USCA 9th Cir. Case Nos. 14-55361, USDC (C.D. Cal) 13-cv-08361-PA-E) **[<u>Removal</u>** Superior Court of the County of Los Angeles Case Nos. BC463850, BC474698, BC463639, Cal. Court of Appeal 2nd Dist. B248667, B250084, B256763**]** and any related proceedings;

p. *The Rule Company Inc. v. Amy P. Lee of the Law Offices of Amy P. Lee, Nina R. Ringgold of the Law Offices of Nina R. Ringgold* (USCA 9th Cir. Case No. 14-56731, USDC (C. D. Cal.) 13-cv-08361-PA-E and any related proceedings;

Justin Ringgold-Lockhart, Nina Ringgold as Named Trustee, Related: q,r, s, t

q. *Justin Ringgold-Lockhart et al. v. Myer Sankary et al*. (USCA 9th Cir. 11-57247, USDC (C. D. Cal.) 09-cv-09215-R-RC and any related proceedings

r. *Myer Sankary v. Justin Ringgold-Lockhart, Nina Ringgold in capacity as Named Trustee et al*. (USCA 9th Cir. 13-55063, USDC (C. D. Cal.) 12-cv-08905-R-PLA) **[<u>Removal</u>** Superior Court of the County of Los Angeles Case No. PP005201, Cal. Court of Appeal 2nd Dist. B243331)**]** and any related proceedings.

Greta Curtis, Law Offices of Greta Curtis, Law Offices of Nina Ringgold

s. *Myer Sankary, Justice Paul Turner v. Greta Curtis, Esq., Law Offices of Greta Curtis* et al. (USCA 9th Cir. Case No. 13-55040, USDC (C.D. Cal.) 12-cv-10168-R-PLA) **[<u>Removal</u>** Cal. Court of Appeal 2nd Dist. B243331**]** and any related proceedings.

Nina Ringgold, Esq.; Law offices of Nina Ringgold; Amy Lee, Esq.; Law Office of Amy Lee, Related: j,o, p, q, t

t. *The California State Bar et al v. Nina Ringgold, Esq. et al.* USDC (C. D. Cal.) 15-cv-02159 GW-MRW) **[<u>Removal</u>** any regulatory or investigating action)**]** and any related proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2015, I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

AFFIDAVIT ON PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS, AND FOR STAY OF ORDER ENTERED ON JANUARY 8, 2015, AND FOR OTHER APPROPRIATE RELIEF; PETITION TO RECALL MANDATE AS TO APPEALS IN DISTRICT COURT CASE NOS. CV11-01725 R (PLA); AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on March 31, 2015 at Los Angeles, California.

s/ Matthew Melaragno

APPENDIX 28

9th Cir. Civ. Case No. _____
USDC Case No. CV15-01261 R (Ex)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAW OFFICES OF NINA RINGGOLD, NINA RINGGOLD, ESQ.
Petitioner and Defendant,

ASAP SERVICES, INC. dba ASAP COPY AND PRINT, ALI TAZHIBI
Defendants,

v.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, JUSTICE ROGER BOREN as an individual and in the administrative capacity as Administrative Presiding Justice of the California Court of Appeal Second Appellate District, BECKY FISHER as an individual and in the administrative capacity as Deputy Clerk of Court, et al
Real Parties In Interest.

From the United States District Court for the Central District
The Honorable Manuel Real

PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS; AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

NINA RINGGOLD, Esq. (SBN #133735)
Attorney for Petitioners
Law Offices of Nina R. Ringgold
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I. INTRODUCTION

Petitioner files this writ petition following a March 11, 2015 order denying a motion to disqualify Judge Manuel Real of the United States District Court for the Central District and for intercircuit assignment. The motion was filed on March 9, 2014 under 28 U.S.C. § § 47, 144, 292, 455, and the Fourteenth Amendment. (BS 30-1612). [1]

The motion also requested issuance of a certificate of necessity for temporary assignment of an out of state judge under 28 U.S.C. § 292 (d). As to this assignment the motion argued that the matters in the case and related class action involved issues concerning judicial conduct and the general and pecuniary interest of both state and federal judges in this circuit. The motion argued that there was a need and it was in the public interest to use the procedures of 28 U.S.C. §292. (BS 38).

The motion further stated:

> "¶Without any disrespect to any particular judge, the nature of the legal issues require serious consideration of the conduct, general and pecuniary interest, which impact fairness and public confidence in the proceedings. Defendants claim that there is actual bias. However, even if actual bias cannot be proven, there is an appearance of partiality requiring disqualification of Judge Manuel Real.
>
> ¶The instant case is fundamentally grounded on the Civil Rights Act of 1866 and removal based on this statute. See Jones v. Alfred H. Mayer Co., 392 U.S. 409, 413 (1968). Under the Civil Rights Act of 1866 and the Fifth Amendment a federal court is barred from enforcement of the discriminatory application of state law See Hurd v. Hodge, 334 U.S. 24 (1948). Compare Shelly v. Kraemer, 334 U.S. 1 (1948). Also Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) bars retaliation for advocacy concerning rights protected under the Civil Rights Act of 1866…." (BS 38-39).

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[1] Citation method: Appendix Bates Stamp Nos.

The motion to disqualify was denied after erroneously framing the issue as "…that Judge Real should be disqualified because he refuses to abide by a mandate imposed by the Ninth Circuit and because he has demonstrated actual bias against Defendant Ali Tazhibi and defense counsel Nina Ringgold. " (BS 2). Although defendants would not disagree that there is actual bias, the motion was based on an appearance of partiality, the judge's use of non-existent and/or extrajudicial sources, pervasive bias directed at persons seeking a special judicial election. As to the request for intercircuit assignment, the judge is not the statutory officer to determine issuance of a certificate of necessity under 28 U.S.C. § 292 (d) and defendants' request should have been provided to the person with statutory authority. The Judge referred on the question of disqualification of Judge Real did not have statutory authority to deny the request for intercircuit assignment or give an opinion on the request. The same judge should not have determined the question of judicial disqualification because she was a former judge of the Los Angeles Superior Court where the unconstitutional public employment resides and hence she had a general and financial interests in the case, the issues raised in the pending class action[2], and in the pending legal challenges to section 5 of California Senate Bill x211 ("section 5 of SBX2 11"). (See Certificate of Interested Parties BS 19-21). Public confidence in the ultimate decision in a substantial legal controversy is served by designation and appointment of an out of state judge given the various challenges filed.

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[2] *Law Offices of Nina Ringgold and All Current Clients Thereof v. Jerry Brown et a*l, (USDC (Eastern District) Case No. 12-cv-00717). (See BS 493-609, Second Amended Complaint involving claims under the Voting Rights Act, California Political Reform Act, California Whistleblower Protection Act, Civil Rights Act of 1866, Request for Appointment of Public Trustee from Office of Inspector General, for declaratory and injunctive relief). ("VRA Case").

II. STATEMENT OF RELIEF SOUGHT

Petitioner seeks the following relief:

(1) Pending determination of this writ petition:

a. That this court stay the March 11, 2015 order and all proceedings before Judge Manuel Real;

b. That if Judge Real enters an order after this writ petition is filed that such order be stayed;

c. That this court stay all proceedings impacted directly or indirectly by the pervasive bias of Judge Real which has prevented the VRA members from obtaining timely and effective injunctive relief on their common issues.

(2) Upon disposition of this writ petition, petitioner requests:

a. Vacate. That this court vacate the order denying disqualification.

b. Vacate. That should Judge Real enter an order of remand after this petition is filed that this court vacate the order because petitioner has demonstrated grounds for disqualification and further proceedings cause unnecessary delay and prejudice to defendant and all persons involved with or associated with the VRA case.[3]

c. Intercircuit Assignment. Due to substantial bias and prejudice of Judge Manual Real and the substantial bias and prejudice in the tribunals in the geographical area as to persons involved in or associated with the VRA case (because they are seeking a monitored judicial election), petitioner requests that the petition under 28 U.S.C. § 292 be forwarded to the designated statutory officer for determination of issuance of a certificate of necessity for an intercircuit assignment

[3] See Affidavit on writ petition.

outside the State of California of the VRA case and of all cases of persons involved in or associated with the VRA case. Moreover, this court should determine that the persons making that determination should not have a financial or general interest in the issue.[4]

d. That this court stay all proceedings pending in this court, the district court, and state court as to persons involved with the VRA case or associated with the VRA pending disposition of the request for intercircuit assignment.

III. STATEMENT OF FACTS

A. Procedural Facts

On February 23, 2015 defendants ASAP Services, Inc., Ali Tazhibi, Law Offices of Nina Ringgold, Nina Ringgold, Esq. filed a notice and petition for removal under § 1 and § 3 of the Civil Rights Act of 1866, 28 U.S.C. § 1443, 28 U.S.C. § 1441 (28 U.S.C. § 1331); Petition under the All Writs Act (28 U.S.C. § 1651); and Petition for Relief based on Writ of Quo Warranto, and Habeas Corpus. (BS 1613-2134). They filed a notice of related cases identifying the VRA Case in the Eastern District assigned to Judge Mendez and a case entitled *Kempton v. Clarke* in the Central District and assigned to Judge Andre Birotte Jr. (BS 13-18). The *Kempton v. Clarke* case also involved a civil rights removal and it claimed that Justice Boren had engaged in retaliatory administrative acts under CCP § 391.7 in violation of the Civil Rights Act of 1866. (See Affidavit ¶ 14).

Defendants also filed a notice of interested parties. (BS 19-21). The notice included former judges of the Los Angeles Superior Court. (Id.)

The plaintiffs on the petition are the California Court of Appeal for the Second Appellate District; Justice Roger Boren as an individual and in an administrative

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[4] For example, like the Judge O'Connell who was referred to determine the issue of judicial disqualification who and had previously accepted public employment and office from the County of Los Angeles and is still receiving benefits from this prior public employment. (See BS 525-526, 615, Cal. Const. VI § 17, Section 5 of SBX 2 11).

capacity as administrative presiding justice; and Becky Fischer as an individual and in an administrative capacity as deputy clerk of court. (BS 1618-1619).

On case opening to Judge Morrow was assigned to the case. (BS 2314).

On February 27, 2015 Judge Morrow recused herself. Disregarding the notice of related case filed on February 23, 2015, a direct assignment was made to Judge Real. (BS 9-10).

On March 9, 2015 defendants filed a motion to disqualify Judge Real and for intercircuit assignment under 28 U.S.C. § 292 (d). (BS 28-1612).

On March 10, 2015 the motion was referred to former judge of the Los Angeles Superior Court, Judge Beverly Reid O'Connell. (BS 28-29). Judge O'Connell did not recuse herself although she had a general and financial interest in the issues raised.

On March 11, 2015 Judge O'Connell denied disqualification. (BS 1-5).

On March 25, 2015 Canon Business Solutions ("CBS") filed a motion to remand although it was not a party on the order to show cause or the contempt proceedings at issue on the civil rights removal and not a party in interest on the issues in the proceeding. It never met and conferred regarding its motion. Its motion contains erroneous facts and is not accompanied by a declaration as mandatorily required by the local rules of court. The motion failed to recognize that the civil rights removal was foundationally based on the Civil Rights Act of 1866 which is an independent source of federal jurisdiction within the exclusive jurisdiction of the federal court. (BS 2135-2163).

On April 9, 2015 defendants filed an ex parte application for stay and injunction pending review of a petition for writ of mandamus. On this same day defendants filed a request under local rule 7-8 to cross-examine the attorney who had filed the motion with erroneous factual and evidentiary matter without a declaration or to strike the motion and require immediate correction prior to re-filing. (BS 2164-2182).

On April 11, 2015 defendants' filed opposition to the motion to remand. They also filed an objection and motion to strike. (BS 2183-2315).

On April 20, 2015 CBS filed reply. (BS 2306-2315).

On April 21, 2015 an order was entered and served (but dated April 16, 2014) that denied the defendants' motion for stay. (BS 2316-2318).

On April 28, 2015 Judge Real vacated the hearing date and took the CBS motion under submission. (BS 2319-2320). There has been no ruling, and even if there is a ruling, petitioner is requesting a stay of the order. (See Section on Relief Sought herein).

B. General Background

The California Legislature through the enactment of California Senate Bill 731 effective January 1, 2012 confirmed that prior to this date that a state appellate court "justice" did not have jurisdiction to enter a pre-filing order. To the present date there still does not exist any jurisdiction to make a vexatious litigant determination in the first instance in a state appellate court. A mandatory statutory due process motion must be filed by a defendant in the form of a motion for security and if an adverse ruling is entered there is a statutory right to appeal. The Legislature also squarely rejected the proposition that the statute applied to persons represented by counsel or attorneys. (BS 669-671).

Members of the VRA Case claim that the California Vexatious Litigant Statute had been used as a form of viewpoint discrimination against persons seeking a monitored special judicial election under the Voting Rights Act and to prevent appellate review of federal claims. They claim it is being used as a form of coercion and intimidation in state court proceedings.

Plaintiffs Justice Boren and Becky Fisher were involved in extraordinary acts of retaliation and discrimination in their administrative capacity and without jurisdiction. This included issuing administrative notices that defendants were vexatious litigants

although ASAP and Ali Tazhibi had never been determined to be vexatious litigants and petitioner was solely appearing in the proceedings in the normal course practicing her profession as an attorney. After petitioner encountered a life threating medical emergency while attempting to obtain an accommodation for disability plaintiffs administratively cancelled court filings, removed them from the court and sent them back to petitioner, leaving the Supreme Court without a record during a petition for review. After acting in an adverse administrative capacity causing harm, Justice Boren sat on appeals from the adverse rulings caused by his non-judicial conduct. After defendants filed a case in the federal court regarding the discriminatory conduct and violation of the Americans with Disabilities Act and other relief, and Justice Boren admitted that he had a general and financial interest in the case and the parties; Justice Boren continued to act in the case in the state court. The use of the vexatious litigant order was used to bar ASAP from present a defense in the case.

Repeatedly orders were rendered that CCP § 391.7 did not apply to petitioner as counsel of record. These orders acquitted petitioner of contempt. Plaintiffs issued an order to show cause again attempting to re-impose an alleged contempt in violation of Double Jeopardy. Plaintiff refused to file the mandatory required certificate of interested parties which is the filing used by appellate justice to determine if recusal is required. (See BS 1621:16-1622:6, 1622:27-1623:7, 1692-1711). This case was removed on February 23, 2015.

The motion to disqualify Judge Manual Real has been filed while this judge stands defiant to the mandate of the Ninth Circuit. This court reversed Judge Real's pre-filing order in the case of Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057 (9th Cir. 2014). Without notice to petitioner and others or an opportunity to participate in the proceedings as directed by the mandate, Judge Real entered a new order. More importantly, the reason for not giving notice or an opportunity to

participate in the hearing is due extraordinary evidence that the reason for the December 6, 2011 order had nothing to do about two cases being filed in the district court, but rather it was formed to assist adversaries of members of the VRA Case who had lost significant legal ground by a favorable decision from the California Supreme Court and action of the California Legislature which greatly enhanced the position of the VRA Case. (See BS 22.3-22.4, 1649-1650, 1728).

Judge Real has used non-existent information and extrajudicial information in court proceedings, stated that members of the VRA case have no status in his court, has made self-assignment orders to control cases that were not assigned to him under the General Orders of the court, has engaged contempt proceedings against an attorney without notice in the case of the client, has stated that civil rights laws pertaining to racial equality are "just laws" (inferring they do not need to be enforced), and has formed an indirect financial interests, and has engaged in persistent and pervasive bias direct at the VRA members. Additionally, due to his refusal to comply with the Ninth Circuit's mandate and his use of non-existent or extrajudicial sources of information he has inevitably made himself a material witness in the case.

C. Background On the Disqualification Motion

The March 11, 2011 order improperly indicates that defendants were attempting to show actual bias. (BS 2). It did not sufficiently distinguish between the statutory basis for disqualification under 28 U.S.C. § 144/ 28 U.S.C. 455 (b)(1) and 28 U.S.C. § 455 (a), 455 (b)(2) through (b)(5). The order disregards 28 U.S.C. § 455 (a) as a basis for disqualification. It erroneous indicates that defendants were addressing Judge Real's legal rulings. (BS 3). It disregarded the evidence on the non-existent and extrajudicial sources of information used by Judge Real and the exception to the extrajudicial source doctrine – pervasive bias. Fundamentally the order is flawed because it fails to address that for the most part defendants were not parties in the

proceedings identified and that Judge Real is not the judge assigned to the VRA Case. Interestingly, the order indicates that defendants "fail to specify what these [extrajudicial] sources might be". (BS 4). Defendants, in part, claimed the judge was using "non-existent" sources. In other words, sources that even the parties to the proceedings conceded did not exist. (BS 346-346, 399, 1256). Non-existent facts are not a legal ruling. Instead, it goes to the issue of pervasive bias and certainly an appearance of partiality. It also goes to the issue of establishing that the judge would necessarily become a material witness because only s/he can provide the answer to the question of the "source" which everyone party and attorney to the proceeding agrees does not exist. The court took an unreasonably narrow view of financial interest which is not consistent with decisions of the United States Supreme Court and it disregarded the fact that there is at least an appearance of a quid pro quo interest when the U.S. Attorney's Office does not defend the judge's order and others who are in the case and have a vested financial interest attempt to act a substitutes. Defendants argued that a general and financial interest developed with adversaries in the proceedings and those adversaries had a financial interest in the VRA Case. Some appeared in the appeal on the , now reversed December 6, 2011 order in the Ninth Circuit, without participating in the district court proceedings *or* filing a brief in the Ninth Circuit, to defend Judge Real's order. (BS 64-65). Later they appeared in other proceedings unrelated to the December 6, 2011 order and claimed that any person associated with petitioner or the VRA Case was "vexatious by association" based on the December 6, 2011 order. Judge Real engaged in repeated self-assignments in order to "work prejudice" against VRA members who were never involved in the proceedings leading up to the December 6, 2011 order or subject to the order.

As to disqualification under the Fourteenth Amendment the March 11, 2015 order disregards information of Judge Real becoming part of the accusatory process,

becoming embroiled in a controversy, assigning cases to himself, back-dating orders, and developing a general interest and pre-disposition that disregarded neutrality.

As to disqualification under 28 U.S.C. § 47, the March 11, 2015 order omits basis for disqualification. The motion states: "Even though Judge Real is not sitting in a reviewing court the policy of 28 U.S.C. § 47 applies. Considering the statute and policy, in this context, there are grounds for disqualification under 28 U.S.C. § 455 (a)." (BS 46).

Defendants provided detailed declarations and supporting evidence. (BS 30-1612).

The Declarations of defendants[5] provided information which supported disqualification. They verified information concerning the VRA Case. They claimed that Judge Real had been persistently engaged in targeted prejudice directed at VRA members; provided evidence and gave specific evidence of the Judge using non-existent sources of information and extrajudicial sources of information to prejudice the rights of all VRA members; information from two cases in which the judge had made reference to a judgment which did not exist; that there was bias because law office clients such as Ali Tazhibi and others targeted because they had presented declarations and evidence in proceedings in which they were not parties in order to obtain a protective order and injunction because in their pending cases they were being deemed "vexatious by association"; evidence of a pattern of pervasive bias; evidence that Judge Real had claimed that VRA members had no status in his court, and evidence that Judge Real claimed that civil rights laws were just statutes not that they should be enforced. They also provided evidence of Judge Real's refusal to comply with the mandate of the Ninth Circuit which was preventing VRA members from filing one common application for injunctive relief and relief in the VRA Case. They also provided evidence that Judge

[5] Petitioner alleged and verified the same facts as Ali Tazhibi and provided her own declaration. (BS 61).

Real had demonstrated bias by attempting to direct cases to himself in order to continue a controversy and continue to defend his position on matters on appeal which did not involve defendants as parties. Finally they also provided evidence that the bias directed at the attorney was being constructively applied to clients and VRA members as a method from preventing them from having legal representation. (See BS 239). Additionally defendants provided information indicating pervasive bias and that Judge Real would likely be a material witness his use of non-existent and extrajudicial sources of information and as to a series of events which following the entry of the now vacated December 6, 2011 order. (See BS 22.3-22.4, 63¶ 9 & fn12).

As to the request for referral to the statutory officer for determination of issuance of a certificate of necessity, the declarations of defendants in part provided the following information:

1. That all cases related to section 5 of SBX2 11 or associated with the VRA case be transferred outside the State of California.

2. That the public was not excluded or barred from presenting pertinent information about the necessity and public interest served by an assignment under 28 U.S.C. § 292 (d).

3. That over half of the judges in the Central District and in other Districts had recused themselves in cases involving VRA members.

4. That a substantial number of judges in the area received and are still receiving benefits from former public employment in a California Court of record and they would be called upon to rule upon matters impacting their colleagues and friends.

5. That there were repeated irregularities in judicial assignment in various cases, including in this case. There were specific details concerning the irregular case assignment and transfer order in this case. Information was also given concerning the

irregularity that occurred with one judge signing an transfer order over the signature line of a different judge to obtain jurisdiction over the case.

6. That on a prior civil rights removal involving ASAP (USCA 9th Cir. 15-55307), that the judge failed to disclose that she was actively vying for a judicial appointment in the California Court of Appeal for the Second Appellate District and that defendants in various cases including Justice Boren were involved in the issue involving the judicial appointment.[6] (BS 1619 fn 5).

(See Declarations at BS 49-65).

IV. ARGUMENT

A. Review Standard

The general standard for issuing a writ of mandamus pursuant to 28 U.S.C. § 1651 were established in the five factors addressed in Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977). Satisfaction of all five factors is not required to obtain relief by mandamus. See In re Cement Antitrust Litigation (MDL No. 296), 688 F.2d 1297, 1301 (9th Cir. 1982) (five factors are part of an analytical framework) .

Supervisory mandamus is proper when an adequate alternative means of review is unavailable, there is a showing of substantial harm to the public's interest which is not correctable on appeal, the district court's order is clearly erroneous, or the matters present significant issues of first impression that may repeatedly evade review. See Perry v. Schwarzenegger, 591 F.3d 1147, 1154, 1159 (9th Cir. 2010), 28 U.S.C. § 1651 (a). It can be used to correct an established trial court practice that significantly distorts proper procedures. See United States v. Horn, 29 F.3d 754, 769 n. 19 (1st Cir. 1994). This form of mandamus is appropriate when "a question anent to

[6] See also BS 2204-2207, 2212 (CBS billing statement for motion for attorney fees the state court (when sealed records would reveal no contractual basis for attorney fees) and fees erroneously charged for federal litigation (on civil rights removal involving the judge seeking appointment, USCA 9th Cir. 13-55307).

the limits of judicial power, poses some special risk of irreparable harm …. and is palpably erroneous." Id. at 769; In re Cargill, Inc. 66 F.3d 1256, 1260 (1st Cir. 1995) (i.e. where petitioners can "show both that there is a clear entitlement to the relief requested and that irreparable harm will likely occur if the writ is withheld.").

Advisory mandamus is not directed at established practices but rather at issues that may be novel, of public importance, or likely to recur. As to advisory mandamus petitioner does not need to demonstrate irreparable harm or clear entitlement to relief. See In re Sony BMG Music Entertainment, 564 F.3d 1, 4 (1st Cir. 2009)("When advisory mandamus is in play, a demonstration of irreparable harm is unnecessary."); In re Atlantic Pipe Corp., 304 F.3d 135, 140 (1st Cir. 2002)(a systemically important issue which the court has not yet addressed.) .

The Chief judge of the Ninth Circuit is guided solely by the public interest in determining whether to present a certificate of necessity to the Chief Justice of the United States. There is no need to conduct a poll of the circuit judges before issuing a certificate of need. See U.S. v. Clairborne, 870 F.2d 1463 (1989).

B. Petitioner Has Demonstrated Grounds For The Relief Sought Under 28 U.S.C. § 292.

28 U.S.C. § 292 in pertinent part states as follows:

> " (d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises."

Judge O'Connell did not have jurisdiction to attempt to determine the petition. The sole function was to refer the matter to the designated statutory officer and for that officer to make the decision publically available and reviewable. Other than the statutory designated officer's determination on issuance of a certificate of necessity a

judge has no role greater role than the parties and members of the public to offer her view on the matter. Therefore, the formal requests for issuance of a certificate of necessity should have been forwarded to the person with designated statutory authority without comment.

The March 11, 2015 order infers that the public and parties have no interest or information to provide concerning the exercise of the statutory function specified in 28 U.S.C. § 292 (d). Given the substantial nature of the issues raised and the unquestionable public interest, the disregard of the statutory function provides an inference of the type of local prejudice complained of by defendants. It fosters a view in the general public that this is merely another incident of judges protecting their own. The focus should be on whether objectively the requested intercircuit assignment and procedure for such assignment will provide an outcome of an impartial and objective legal analysis that promotes and inspires public confidence.

Nothing in the March 11, 2015 order states that there was not a need for issuance of a certificate of necessity, it only made an erroneous claim that a party cannot invoke use of the procedure. The public specifically harmed by a betrayal of the constitution can act and can request a public ruling on the determination of the need for issuance of a certificate of necessity.

Due to the substantial public interest in the cases raising challenges to section 5 of SBX2 11 and the strong showing that the uncodified portion of the statute directly conflicts with the Supremacy Clause, United States Constitution, Section 1 of the Civil Rights Act of 1866, and Art. VI § 17 and § 21 of the California Constitution, the panel should refer to the Chief Judge of this court the information of this petition. The Chief Judge is the statutory officer to make a determination of whether to present a certificate of necessity to the Chief Justice. The resulting determination should be open and public and subject to review. People, who were trapped in proceedings after

the enactment of section 5 of SBX2 11, are daily being divested of federal rights and of the right to disclosure and consent mandated by the California Constitution. The matters involve constitutional issues that warrant objective consideration and should not be viewed as a "call to arms." Court users cannot be held hostage to an unconstitutional system without disclosure and their consent. They have a right and option to use a different forum.

Given the nature of the emerging issues and the fact that a large segment of the federal judiciary in this circuit were previously engaged in public employment at issue in the cases, it is appropriate to request the certificate of necessity and assignment of an out of state judge or justice.

Information of the Judicial Conference Committee on Intercircuit Assignments confirms that intercircuit assignments are made not only to handle a court's caseload. Such judicial assignments are also made in circumstances involving task force initiatives, complex cases, and when there are unique circumstances arising from recusals or potential conflicts of interests.[7] The Guidelines for the Intercircuit Assignment of Article III Judges approved by the
Chief Justice on February 16, 2012 identifies the authority and assignment procedure. It does not bar parties or the public from acting as the source of information for identification of the and the public interest to be served in the exercise of the statutory authority to designate and make a temporary intercircuit assignment.

[7] See The Third Branch (December 2010) http://www.uscourts.gov/News/TheThirdBranch/10-12-01/Committee_Answers_Courts_Calls_for_Help.aspx (Website of the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary)

C. Petitioner Has Demonstrated Grounds For Advisory and Supervisory Mandamus

On advisory mandamus the petitioner is not required to show irreparable harm, although such harm is clearly present in this case. In re Sony at 4. Here there is a valid and objective dispute as to the law on whether the parties or the public can provide information relevant to the question of a certificate of necessity particularly when the necessity is arising in party from judicial conduct. This is a systemically and important issue which this court has not addressed that is likely to reoccur; and the issue is fundamental to obtaining fair and reasonable access to the federal court. See In re Atlantic at 140. Any local rule or practice must be consistent with Acts of Congress and the rules of practice and procedure prescribed by the Supreme Court under 28 U.S.C. § 2072. 28 U.S.C. § 292 does not prohibit a party from invoking the statutorty procedure and obtaining a copy of the resulting order.

Supervisory mandamus it warranted because the matter at issue is unsettled, adequate review methods are unavailable, and there is a substantial public interest.

D. The *Bauman* Factors For Mandamus Jurisdiction Has Been Satisfied.

1. Petitioner Does Not Have Other Means, Such As a Direct Appeal, To Attain the Relief Desired.

Petitioner cannot appeal the order denying disqualification. Such order is reviewable on appeal after final judgment. See In re Cement at 1302. The first *Bauman* factor is satisfied.

2. The March 11, 2015 Order is Clearly Erroneous

Two provisions of the U.S. Code address recusal, 28 U.S.C. § 144 and 28 U.S.C. § 455. In 1974 § 455 was amended to read in pertinent part: "(a) Any…judge…shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge or disputed evidentiary facts concerning the proceeding…" The other provisions of 28

U.S.C. § 455 (b)(2) through (b)(5) set forth "other interests" and "relationship" grounds for recusal. Defendants' motion was under 28 U.S.C. § 144/28 U.S.C. §455 (b)(1); 28 U.S.C. § 455 (a); 28 U.S.C. § 455 (b)(4); 28 U.S.C. § 455 (b)(5)(iii); 28 U.S.C. § 455 (b)(5)(iv); 28 U.S.C. § 47; and the Fourteenth Amendment.

On statutory grounds defendants claimed disqualification was required under the catchall provision of 28 U.S.C. § 455 (a)[impartiality might reasonably be questioned], 28 U.S.C. § 144 [personal bias or prejudice either against a party or in favor of any adverse party]; 28 U.S.C. § 455 (b)(1) [personal bias or prejudice concerning a party or knowledge of disputed evidentiary facts concerning the proceeding]; 28 U.S.C. § 455 (b)(4) [has a financial interest in the subject matter in controversy or in the party to the proceeding, or other interest that could be substantially affected by the outcome of the proceeding], 28 U.S.C. § 455 (b)(5)(iii) [an interest that could be substantially affected by the outcome of the proceeding], 28 U.S.C. § 455 (b)(5)(iv)[likely to be a material witness]. A judge may not waive grounds for disqualification under 28 U.S.C. § 455 (b). 28 U.S.C. § 455 (e). Disqualification is required under 28 U.S.C. § 47 when the judge acting as reviewing court attempts to pass on the propriety, scope or effect of her ruling made in the first instance. This limitation is applied not only to direct cases, but also to similar cases. Swann v. Charlotte-Mecklenburg Board of Education, 431 F.2d 135, 136 (4th Cir. 1970). Even if Judge Real was not sitting as a reviewing court under 28 U.S.C. § 455 (a) the same policy factor in assessing an appearance of partiality applies.

(a) Statutory Basis

(i) 28 U.S.C. § 144
[personal bias or prejudice either against a party or in favor of any adverse party]

28 U.S.C. § 455 (b)(1)
[personal bias or prejudice concerning a party or knowledge of disputed evidentiary facts concerning the proceeding]

28 U.S.C. § 455 (b)(1) duplicates the grounds of "bias and prejudice" for disqualification under 28 U.S.C. § 144 without the 10 day procedural limitations.

Defendants provided evidence establishing personal bias and prejudice against a party, evidence of a bias in favor of adverse parties, and use of non-existent sources of information by Judge Real which met the requirements of 28 U.S.C. § 144 and supported mandatory disqualification under 28 U.S.C. 455 (b)(1). See 28 U.S.C. § 455 (e).

First, Judge Real demonstrated personal bias and prejudice against members of a group associated with the VRA Case and he was not a judge assigned to this case. This personal bias and prejudice is shown by the refusal to comply with the mandate of the Ninth Circuit which impacts persons who were not involved in the case.[8] The March 11, 2015 order refers to the subsequent pre-filing order. However, this only highlights disqualifying personal bias and prejudice because Judge Real failed to comply with the mandate by conducting further proceedings and the order was entered without any notice to petitioner. The March 11, 2015 order fails consider that the all VRA members, including Ali Tazhibi and ASAP Copy and Print, have not been allowed to proceed as VRA members in an entirely different case in a different district

[8] *Ringgold-Lockhart v. County of Los Angeles* USDC 11cv-01725.

based on Judge Real's order.[9] The March 11, 2015 order indicates that Judge O'Connell's believed it was not her place to determine whether Judge Real's order complied with the Ninth Circuit's mandate. Since she undertook to locate and address this order on review and not addressed in defendants declaration. She could have easily seen that the order was entered sua sponte and parties in the collateral proceeding (including petitioner) never were given notice or opportunity to participate in the further proceeding in compliance with the Mandate. This did not require a legal determination for one can see that from a glance of the docket. The refusal to comply with the Ninth Circuit order had nothing to do with a judicial ruling. Instead the refusal to comply with the mandate demonstrated obvious prejudice, without reference to any ruling, because the affected parties were entirely excluded from the proceeding. Therefore the March 11, 2015 invokes an issue to frame an erroneous issue.

Secondly, evidence establishing a strong inference that the now vacated December 6, 2011 pre-filing injunction (that adversely impacts the VRA Case) was never about the number of cases filed or their merit. Instead, it was a tool of Judge Real's advocacy for adversaries of the VRA members as discussed above.[10] Third, the

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[9] See USCA 9th Cir. 15-70989.

[10] The Ninth Circuit in Ringgold-Lockhart *supra* noted that that Judge Real "found the Ringgolds vexatious primarily on the basis of the current case and an earlier federal case" and "motion practice" in the two cases. Id. at 1064-1065. It further explained that whether motion practice in two cases could justify imposing a pre-filing order would be extremely unusual in light of other alternative remedies. Id. at 1065. Now it can be shown that it was extremely unusual indeed and was artificially devised advocacy for defendants in a different case in the state court and to benefit plaintiff Justice Boren. California Legislature had rejected expansion of the California Vexatious Litigant Statute to include attorneys and persons represented by attorneys, the California Supreme Court's had ruled in favor of the view taken in the VRA Case the case Shalant v. Girardi, 51 Cal.4th 1164 (Cal. 2011), and the enactment of SB 731

judge had indicated that in a different case that VRA members had no status in his court. A point not mentioned in the March 11, 2015 order. Additionally Judge Real's comments indicating that certain civil rights law were just laws not they should be enforced demonstrated bias. In the courtroom, it was clear that the Judge was referring to the fact that he believed that the Civil Rights Act of 1866 could not be enforced and there was no remedy for its violation. The March 11, 2015 order claims that Judge Real was indicating that removal was improper. The was not what Judge Real said, not his tone, and was disregards the impact it had in the courtroom. The defendants were not parties in the case where these statements were made.

> "Mr. Kinney: The discrimination statute--, The Court: That's all it is."
>
> ….
>
> "The Court: No, she has no status in this court at all. She's never appeared here.
> …
> Ms. Ringgold: She is represented by counsel. So, in response to the Court, certainly because the Court is making these rulings that I haven't had an opportunity to respond to the order to show cause, and these are the arguments that I have attempted to make on this record that certainly will be under review….."
> ….
> Ms. Ringgold: …And I wanted to address the issue about 1443 is this important fact that the California vexatious litigant statute is applied in a manner so that if you do not allow the law office of Greta Curtis to represent clients in the state courts and you intimidate those parties so that they can't appear and assert their private property interests in a trust, then that is—it directly impairs a federal civil right, which is the right to inherit under 42 U.S.C. 19—1982… But as to Greta Curtis , the impact is more substantial, because under the Civil Rights Act of 1964, her rights are being impaired…because she is unable to perform her duties as an attorney to investigate the record, to argue why people who are being divested of property in state probate proceedings have standing

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effective January 1, 2012 also supported the position of the VRA members. (i.e. BS 556 ¶ 115-116, 561 ¶ 143, 563 ¶ 145e & ¶ 146).

> in the proceedings; and these methods of, one, pursuing litigation after the case has been removed… are forms of intimidation which gives this court subject matter jurisdiction under 28 1443."

(See BS 334, 339, 341-342).

Finally, as discussed above Judge Real's use of non-existent evidence is a mandatory disqualifying bias under 28 U.S.C. § 455 (b)(1). Judge Real went beyond claiming knowledge of disputed evidentiary facts concerning the proceedings, used non-existent evidentiary facts to support adversaries in the proceeding demonstrating a bias and prejudicial disposition. Later when the state court case was removed, the adversaries had no other choice but to concede that the evidentiary facts about the state court proceeding (which no party had ever raised and never existed) were entirely non-existent (beyond extrajudicial).

(ii) 28 U.S.C. § 455 (a)
[appearance of partiality]

The applicable standard under the catchall provision is whether a reasonable person with knowledge of all the facts would conclude the judge's impartiality might reasonably be questioned. Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847, 860 (1988). The test is not whether Judge Real is actually bias, but rather, if there is an appearance of partiality. United States v. Baca, 610 F.Supp.2d 1203, 1213 (E.D. Cal. 2009), United States v. Holland, 519 F.3d 909, 913 (9th Cir. 2008). A reasonable person aware of the pertinent facts would believe disqualification was required. In close cases a judge must recuse herself. See In re Boston's Children First, 244 F.3d 164, 167 (1st Cir. 2001). The March 11, 2015 erroneously views the motion to disqualify as defendants attempt to prove actual bias. Objective review of the declarations of the defendants demonstrates that an appearance of partiality including group prejudice against persons involved in or associated with the VRA case was overwhelming established.

(iii) Non-Existent Sources and Extrajudicial Sources And Exception Based On Pervasive Bias

The March 11, 2015 order disregards Judge Real's use of non-existent sources, applies an erroneous legal standard as to extrajudicial sources, and then disregards the exception to the extrajudicial source doctrine – pervasive bias.

The Supreme Court in Liteky v. United States, 510 U.S. 540 (1994) held that 28 U.S.C. § 455 (a) is subject to the limitation of the extrajudicial source doctrine. In other words, the source must be from outside the case pending before the judge. In the instant case all of the sources of the prejudice and bias identified in the motion were completely extrajudicial to ASAP and Ali Tazhibi. Moreover, for the most part in none of the cases the defendants were not parties. Defendants' motions to disqualify were not based on judicial rulings. Pervasive bias, in any event, is an exception to the extrajudicial source doctrine. See Liteky at 551 citing Davis v. Board of School Comm'rs of Mobile County, 517 F.2d 1044, 1051 (5th Cir. 1975). Judge Real was not presiding over the VRA Case.

The March 11, 2015 order does not apply the standard in Liteky v. United States, 510 U.S. 540, 547 (1994). Liteky involved the issue of extrajudicial sources of information obtained by the judge in the *same action or earlier proceeding involving the same parties*. There was an unmistaken existing pattern of bias of Judge Real which stemmed from an earlier proceedings unrelated to defendants as parties. The order ignores that all parties in a case in which defendants were not parties conceded that Judge Real was using non-existent source.[11] The result of the judge's use of the extrajudicial sources of information and bias formed thereon was now constructively applied against defendants and others. Although the initial disqualification order

[11] See *Greta Curtis, Esq., Law Office of Great Curtis v. Myer Sankary*. USDC 12cv-10168-R and BS 338-339, 340-342.

cited to Liteky it disregarded the fundamental point in the case -- that the parties in the Liteky case had been in the *same proceeding* before the same judge.

The March 11, 2015 order disregarded the evidence indicating that the pervasive bias exception applied. See Liteky at 551 citing to Davis v. Board of School Comm'rs of Mobile County, 517 F.2d 1044, 1051 (5th Cir. 1975). In Bell v. Chandler, 569 F.2d 556, 560 (10th Cir. 1977)the court found that disqualification is warranted when the bias and prejudice direct against an attorney is constructively imputed against the client. Id. at 560. In Bell the court indicated that to "shirk the burdensome and painful task [of disqualification] at this time could only lead to further complexities in future proceedings in these cases. On the other hand, it is certain that since the parties' plaintiff seek only a fair and just result, they have no need for any particular judge". Id at 560. Here, Judge Real had a general and financial interest to use and impute extrajudicial sources of information as he had done in other cases. He had an indirect financial interest in the continued defense of rulings in a different case. He had an unnatural bias in attempting to engage prejudice against a group, and to develop and acted upon "us" (judges) vs. "them" (VRA members seeking a special judicial election) point of view. This bias was detrimental to an objective legal analysis about constitutional issues and issues pertaining to federal civil rights on issues relating to equal racial civil rights. It was detrimental to public confidence that the proceeding relating to judicial conduct could proceed with impartiality.

Close inspection demonstrates that Judge Real's pervasive bias was calculated to bring about an intended result and prejudice. The pattern showed that, he inserted erroneous and/or nonexistent information into orders, attempted to intimidate counsel representing the VRA members, and had an adverse pre-disposition formed from extrajudicial or non-existent sources. After a direct assignment to Judge Real

which did not comply with the random assignment procedures of the General Order of the district court, it was an abuse of discretion to deny the motions to disqualify.

The indication in the March 11, 2015 that the declarations presented by defendants solely involved judicial rulings is clearly erroneous and bears on the related issue of the need for an intercircuit assignment. This is because the judge determining the issue of disqualification should not have been a judge with a general and financial interest in the VRA Case.

The March 11, 2015 order indicates that defendants "reply almost exclusively on adverse judicial rulings to establish Judge Real's alleged bias" and then lists 6 examples. (BS 3). This is not fair list of the evidence submitted by defendants. (BS 49-65). Even considering the limited list defendants established grounds for disqualification.

1. "Failing to comply with the Ninth Circuit mandate"- No defendant raised any issue concerning any legal ruling Judge. It is clear that the only claims was that he conducted proceedings without any notice of participant of the impacted person in complete disregard of the mandate. (See BS 65).

2. "Finding that removal was improper in prior related cases" - There is absolutely no evidence submitted by defendants concerning a finding of improper removal in a related case. Additionally, the March 11, 2015 order does not show how a proceeding involving a private intervivos trust of an African American family is related to an immigrant merchant involved in proceedings relating to unfair business practices. Defendants claim that Judge Real was targeting bias against persons who had joined to pursue a class action case under the Voting Rights Case which he was not assigned to. The evidence presented by defendants demonstrated how VRA members in unrelated cases were being subjected to prejudice and being informed by the judge that they "had no status in Judge Real's court."

3. "initiating contempt proceedings" – There is no evidence concerning any judicial ruling of Judge Real. Petitioner was not a party

in this case. The bias and prejudice complained of had nothing to do with any legal ruling but rather that Judge Real had initiated contempt proceeding without notice against petitioner as an attorney *in a client's case (a VRA member)*. The judge was so bent on targeting prejudice to VRA members that he refused to acknowledge that petitioner was not a party and that the alleged pre-filing order which was ultimately vacated had nothing to do with petitioner as an attorney. (See BS 219-220, 264-275).

4. "disagreeing with defendants regarding the propriety of judicial conduct by other judicial officers"- This is where the judge determining the question of disqualification again disregards the disqualification motion to provide her own personal views. Here the order seems to be addressing an issue in the VRA case which has never been before Judge Real because he is not assigned to the case. If it goes to the evidence concerning that undisputed fact that a judge signed a transfer order over the signature line of a different judge to claim jurisdiction over a case of a VRA member or that judge had not disclosed she was vying for a judicial appointment in the state court in conflict with the VRA Case demand for a special consented election, this issues pertain to the need for an intercircuit assignment. (See BS 61-63 ¶ 4-6). This information has nothing to do with any adverse legal ruling of Judge Real but rather with local prejudice in the geographical area.

5. "presiding over cases that were assigned to him as related to other ongoing cases"- The verified evidence showed that Judge Real had repeatedly engaged in self-assignment of cases which did not comply with the procedures of General Orders of the court. Additionally in support of the request for intercircuit assignment it its apparent that in this case that the applicable procedures for case related transfer were disregarded.

6. "indicating that statutes pertaining to racial equality should not be enforced"-As discussed above, that is what Judge Real said and that was conveyed to the courtroom.

(iv) 28 U.S.C. § 455 (b)(4)
[has a financial interest in the subject matter in controversy or in the party to the proceeding, or other interest that could be substantially affected by the outcome of the proceeding]

28 U.S.C. § 455 (b)((5)(iii)
[an interest that could be substantially affected by the outcome of the proceeding]

The standard for this statutory provision is not only a financial interest in the subject matter in controversy but also a financial interest "in the party to the proceeding" or "other interest" that could be substantially affected by the outcome of the proceeding. 28 U.S. C. § 455 (b) (4) and 28 U.S.C. (b)((5)(iii) do not only relate to disqualification when there is a financial interest in the subject matter in controversy. Mandatory disqualification is also required when there is an interest in the party or are other interests that could be substantially affected by the outcome of the proceedings.[12] Judge Real had an "other interest" in causing prejudice in the VRA Case in which he was not assigned and had no jurisdiction over. He was targeting prejudice to a group in order to affect the outcome of the VRA Case. Additionally, he developed a financial interest in the case when persons or entities (with a financial interest to defeat the VRA Case) provided a legal defense to the judge's December 6, 2011 order (which impacted the VRA Case). (See BS 57-58, 64-65). Instead of acknowledging the developing prejudice by the funding of an indirect legal defense, he entered a subsequent order without notice and in direct conflict with the Ninth Circuit's mandate.

[12] Most (but not all) of the VRA plaintiffs made civil rights removals of their individual cases to the federal court, in part, so there could be no claim that they involuntarily agreed to the waive their of federal rights.

(v) 28 U.S.C. § 455 (b)((5)(iv)
[likely to be a material witness]

The March 11, 2015 order indicates that no evidence was presented showing that the judge would be a material witness. Petitioners presented evidence of the judge's use of non-existent and extrajudicial sources of information and he is clearly a material witnesses as to these sources. Secondly, Judge Real is a material witness as to the events giving rise to the December 6, 2011 order and its intended use in the state court proceedings (by parties appearing before the judge). (BS 63-64 ¶ 9).

(vi) 28 U.S.C. § 47

In Swann an appellate judge was informally asked to recuse himself because he had decided a similar case in the trial court involving the same parties. In a solid and reasoned opinion relying upon Rexford v. Brunswick-Balke-Collender Co., 228 U.S. 339 (1913) and Moran v. Dillingham, 174 U.S. 153 (1899) the court concluded the statute applied not only to the actual case but similar cases and that the statue was intended to require the court to be constituted of judges who were uncommitted and uninfluenced by having expressed or formed a prior opinion. The statute is not limited to circumstances of a judge sitting on a direct appeal from her own decree. Even if the statute could be construed as not directly applicable the policy expressed in Swann and the statute provide a basis for disqualification under 28 U.S.C. § 455 (a).

(b) Constitutional Basis – Fourteenth Amendment

Defendants provided concrete evidence that the judge had become embroiled in a continuing controversy. See Johnson v. Mississippi, 403 U.S. 212 (1971), Mayberry v. Pennsylvania, 400 U.S. 455 (1971). Like with the issue of pervasive bias, the March 11, 2015 order ignores this factor.

Recusal under the Due Process Clause is required even in circumstances where a judge does not have a direct or positive interest in a case. See Gibson v. Berryhill,

411 U.S. 564, 579 (1973) (due process violated when the decision makers had an indirect general interest of sufficient substance that was in competition with the parties), Aetna Life Insurance Company v. Lavoie, 475 U.S. 813 (1986) (due process violated by participation of a judge in a case where he had an indirect interest in the outcome), Caperton v. A. T. Massey Coal Co., Inc. 556 U.S. 868, 884 (2009) (due process violated due to the serious risk of actual bias based on an objective perception that a person with a personal stake in the case is influencing the judge's conduct in the case)(i.e. in the instant case Justice Boren); Ward v. Monroeville, 409 U.S. 57 (1972) (due process violated because the mayor had institutional interest in adjudication of traffic fines which contributed to the city's finances). Here, defendants showed that "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Caperton at 47. They presented evidence of a financial interest or a "general concept of interest that would tempt adjudications to disregard neutrality". Id at 878.

3. Petitioner Will Be Damaged or Prejudiced In A Way That Is Not Correctable On Appeal

Judge Real and persistently engaged in a course of conduct and pattern targeting prejudice to a group to inject prejudice in the VRA Case unrelated to him, to act as an advocate for plaintiff Boren, and in furtherance of his promoted vision of "we" vs. "them" (which petitioners and VRA members to not embrace). He has already pronounced prior proceedings in which defendants were not parties that the Civil Rights Act of 1866 could not be enforced and was just a law. Allowing this judge to proceedings causes serious irreparable injury. Even if a direct appeal was available, when there is certain irreparable harm, mandamus jurisdiction is appropriate. See San Jose Mercury News, Inc. v. United States Dist. Ct.-Northern Dist. (San Jose), 187 F.3d 1096, 1099-1100 (9th Cir. 1999).

4. The Order Manifest An Oft-Repeated Error

In this case there are repeated errors with respect to the method for the parties or the public to invoke the procedures of 28 U.S.C. § 292 and public access to the orders determining certificates of necessity. Under the circumstances of this case public confidence is enhanced by an transparent process so that proceedings are conducted in a fair and neutral manner.

5. The Matters Raised Are Fundamentally Related To Issues Of First impression.

As described above, both the underlying case and the issues regarding judicial disqualification raise issues of first impression and/or there is public interest in these matters. Therefore the final *Bauman* factor is satisfied.

V. CONCLUSION

For the forgoing reasons petitioner requests that this court grant the relief sought herein.

Dated: April 29, 2015

Respectfully submitted,

LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2015 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS; AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

The following person is not a registered CM/ECF user and was served by priority mail on April 29, 2015:

For the Respondent Court
Judge Manuel L. Real
United States District Court
for the Central District
312 N. Spring Street - Second Floor
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on April 30, 2015 at Los Angeles, California.

s/ Matthew Melaragno

9th Cir. Civ. Case No. _____
USDC Case No. CV15-01261 R (Ex)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAW OFFICES OF NINA RINGGOLD, NINA RINGGOLD, ESQ.
Petitioner and Defendant,

ASAP SERVICES, INC. dba ASAP COPY AND PRINT, ALI TAZHIBI
Defendants,

v.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, JUSTICE ROGER BOREN as an individual and in the administrative capacity as Administrative Presiding Justice of the California Court of Appeal Second Appellate District, BECKY FISHER as an individual and in the administrative capacity as Deputy Clerk of Court, et al
Real Parties In Interest.

From the United States District Court for the Central District
The Honorable Manuel Real

AFFIDAVIT ON PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS; AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

NINA RINGGOLD, Esq. (SBN #133735)
Attorney for Petitioners
Law Offices of Nina R. Ringgold
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409,Fax: (866) 340-4312
nrringgold@aol.com

AFFIDAVIT OF COUNSEL

1. I am the attorney of record for the petitioners. If called as a witness I could and would competently testify to the matters stated herein.

2. I hereby authenticate the exhibits in the Appendix, Exhibits Nos. 1-34, Bates Stamp Nos. 1-2328. I prepared the timeline at Exhibit No. 7 and I provided the bates stamp numbers (where applicable) which provide the foundation for the time line.

3. This affidavit incorporates by reference the separate affidavit on the motion for stay and injunction.

4. This affidavit is submitted in support of the petition entitled "Petition For Mandamus, Supervisory Or Advisory Mandamus; And Petition For Intercircuit Assignment Under 28 U.S.C. § 292". This writ petition is brought as soon as practicable. Petitioner, as well as persons associated with a pending case with class-based allegations,[1] are adversely harmed by the March 11, 2015 order. Defendant as counsel of record and VRA members have been involved in seeking relief, alternative remedies, and addressing urgent matters. They have made a reasonable and good faith effort to protect their interests. See Cheney v. United States Dist. Court for the District of Columbia, 542 U.S. 367 (2004). This includes but is not limited to seeking relief by completing briefing

[1] See *Law Offices of Nina Ringgold and All Current Clients Thereof v. Jerry Brown et a*l, (USDC (Eastern District) Case No. 12-cv-00717). (See (BS 493-609). Second Amended Complaint involving claims under the Voting Rights Act, California Political Reform Act, California Whistleblower Protection Act, Civil Rights Act of 1866; Request for Appointment of Public Trustee from Office of Inspector General; and for declaratory and injunctive relief). ("VRA Case")

in pending appeals in the Ninth Circuit and state appellate court, protecting interests as to matters pending in the state trial court, pursuing administrative remedies, and engaging in efforts to resolve matters pertaining to cases. This is the earliest opportunity in which this petition could be filed.

5. There is an existing writ petition pending in this court. (See *Ringgold-Lockhart v. County of Los Angeles,* USCA 9th Cir. Original Proceeding 15-70989). In that case, it is shown how Judge Manuel Real has flagrantly refused to comply with this court's mandate in the case *Justin Ringgold-Lockhart et al. v. County of Los Angeles.* This conduct has thereby limited the ability of persons with common issues of law and fact from proceeding jointly as to their common legal interests in an effective manner. (See BS 46-48).

6. The VRA members are racial and language minorities who historically and currently have limited access to the court and financial means. Due to the procedural circumstance and Judge Real's refusal to comply with this court's mandate, rather than the VRA members being able to proceed in one proceeding as to their common legal and factual issues they have had to proceed by separate cases. They all need immediate injunctive relief to effectively present their legal claims. However, they have been artificially forced to deal with the unreasonable obstacle of filing separate requests for relief and to proceed simultaneously in the state and federal court. They all object to the involuntary forfeiture of federal rights under the Supremacy Clause, the Civil Rights Act of 1866, and other federal law caused by Section 5 of SBX2 11.

7. The record on this writ petition shows not only the pervasive bias of

Judge Real, but also (1) his use of non-existent or extrajudicial sources, and (2) that the pre-filing injunction originally formed by Judge Real in the district court was intended to further retaliation and use of vexatious litigant orders to penalized persons involved with or associated with the VRA case in the state court. This was done when such "labelling" was never applicable to the VRA members because they were not in propria persona and no motion was filed in the state trial court to make any such determination.

8. Defendant Ali Tazhibi is the identified representative registered voter in the VRA Case. He is one of the VRAM members who has been labelled as "vexatious by association", prevented from filing dispositive evidence in a pending case based on his association with his own lawyer, and barred access to the court when no motion has ever been filed to make this "vexatious by association" determination against him.

9. Should Judge Real enter an order following the filing of this writ petition, petitioner earnestly and respectfully requests that this court stay such order. Persistently Judge Real has caused severe prejudice as to effective review of matters in this court. The following highlights a few examples:

a. *Justin Ringgold-Lockhart et al. v. Myer Sankary et al.* USDC 09-cv-09215-R. After a preliminary injunction appeal was filed, Judge Real entered filed five dismissal orders (without a final judgment) with non-existent information that Justin Ringgold-Lockhart had been determined not to be an heir in the state court. Although an opening brief had been filed in the preliminary injunction appeal, this court then dismissed the pending injunction appeal as "moot" based on the multiple dismissal orders of Judge Real

(containing erroneous information and information never presented in any proceeding in the state or federal court). (See 399-400, 1246-1265, 1286-1307

b. *Myer Sankary et al. v. Greta Curtis, Esq., Law Office of Greta Curtis et al. v. Myer Sankary et al* USDC 12-cv-10168. After an appeal was filed, Judge Real back dated orders to give the appearance they were entered earlier. (BS 208). He has done the same in other cases including the instant case. (See BS 2316-2314, 2327 Order on motion for stay filed April 16, 2015 but entered on April 21, 2015).

c. *Justin Ringgold-Lockhart et al. v. County of Los Angeles.* USDC 11-cv-01725. Judge Real has never ruled on the request for stay. (USCA 9th Cir. 15-01552, pending, 11-cv-0175-R, Dkt 160).

d. *Nathalee Evans, Dorian Carter v. Jerry Brown et al.* USDC 14-cv-285-R. Judge Real took motions to dismiss under submission *before* the motions were fully briefed. (See Appellants' Opening Brief in USCA 9th Cir. 1456274).

e. In the instant case petitioner filed a request for stay on April 9, 2015. The denial of the request for stay was not entered until April 21, 2015 (although bearing a date of April 16, 2015). (BS 2178-2182, 2316-2318). Therefore, if a writ of mandamus is filed on disqualification, no stay can be obtained because there is no ruling on the stay request. Then when the writ petition or review is sought Judge Real then rules in some manner to make the relief moot. (i.e. to act in some matter to rule on the issues or act adversely to the issues on review).

f. In the instant case Canon Business Solutions ("CBS") filed a motion to remand which was taken under submission on April 28, 2015 prior to

the hearing date. Without a hearing this cuts off the procedural right under the local rules for cross-examination. (See BS 2178-2177). CBS filed a motion for remand without a declaration and when it is not a party with standing. It was not involved in the formation or enforcement of section 5 of SBX2 11, not a respondent on the order to show cause in the state court, not a party on any contempt, and it was not involved in any enforcement of CCP § 391.7. In fact it never filed a motion to have any defendant determined to be a vexatious litigant. It did not file a motion to intervene in the federal court. CBS does has agreed to proceed before a judge subject to constitutional resignation and has given consent, defendants have not. CBS is being used as a tool of plaintiff of Justice Boren who did not file a motion to remand. (BS 2193-2196, 2204-2272, 2281-2282, 2288-2290). CBS did not file opposition to the motion to disqualify.

10. Petitioner objects to CBS's participation in the proceeding. Although counsel for CBS was served with this writ petition and the emergency motion, it is not a party with standing or a party with an interest.

11. The parties are plaintiffs Justice Boren and Becky Fisher solely in their administrative and individual capacity. They did not file a motion to remand. Moreover, removal was under Section 3 of the Civil Rights Act of 1866. It is an independent act and source of federal jurisdiction. Plaintiffs did not file opposition to the motion to disqualify.

12. Defendants have not been allowed to use sealed documents ordered produced on ASAP's successful motion to compel. They have been barred use of dispositive evidence in contested proceedings (whether or not the evidence is submitted under seal). CBS has been filing motions for attorney fees

against defendant ASAP when there does not exist an agreement between ASAP and CBS with an attorney fee provision. Then it redacts its billing statements in attorney fee motions (on a claim that there exists attorney fee provision in a non-existent lease agreement). The billing statements improperly include fees for proceedings in the federal court. Although Justice Boren is a co-defendant with CBS in some of the federal litigation, he has refused to recuse himself in the state court appeals (even on the appeals involving CBS' motions regarding attorney fees that include the improper billing where CBS is providing an indirect legal defense to him in pending federal litigation or the billing identifies federal case numbers). (Compare admission of financial interest BS 2011-2014).

13. The timeline at Exhibit 7 provides information highlighting why Judge Real's December 6, 2011 pre-filing order (reversed by this Court) was not about the two cases which had been filed in the district court (unrelated to ASAP), but rather was formed to be used to bar other clients involved in the VRA case from gaining access to the state court. (See 22.3-22.4). The California Legislature rejected the idea that represented parties and their counsel could be deemed vexatious litigants. Moreover, the Legislative enactment of SB 731 confirmed that there any authority for a "justice" to make a vexatious litigant order in court of appeal. (BS 632-644). To the present date the state appellate court does not have jurisdiction to make such order in the first instance. There is an objective appearance that Judge Real's December 6, 2011 order was intended to protect the interest of the justices (in a case he was assigned to). The statutory enactments supported the position which had been made by VRA

members and highlighted that the administrative acts causing harm to ASAP Copy and Print, the Aubry Family Trust, and in every case of the VRA members were without jurisdiction.

14. When the case was filed on February 23, 2015 it was assigned to Judge Margaret Morrow. (BS 2324).

a. On February 23, 2015 petitioner filed a notice of related cases identifying the VRA case which is pending in the Eastern District and assigned to Judge Mendez and the case of *Kempton v. Clark* 15-cv-01143- AB assigned to Judge Andre Birotte Jr. of the Central District. (BS 13-18). In the latter case petitioner represents Judith Kempton as personal representative of the Estate of Kimberly Kempton. In this case similar legal issues and facts are at issue concerning the administrative acts of Justice Boren and CCP § 391.7. The case also involves prejudicial acts of Justice Boren in which the parties claim such acts were advanced in order to be used against persons associated with the VRA Case. This included authoring a decision for the purpose of use against VRA members to protect is self-interests. (Id. & BS 22.3 (timeline)).

b. Disregarding the notice of related cases, following the recusal of Judge Morrow, on February 27, 2015 a direct assignment was made to Judge Real. (BS 9-10).

c. On March 4, 2015 an order was entered denying a case related transfer on erroneous grounds. It identified a case completely unrelated to the case which was identified on the notice of related cases. The order identified *Kempton v. Clark* 12-cv-10046-PSG is an unrelated case involving a completely different issue and a case which did not involve the petitioner. This case

involved removal based on a filing in the state court that violated a bankruptcy stay. The case identified in petitioner's notice related cases was *Kempton v. Clark* 15-cv-01143- AB. Apparently, *Kempton v. Clark* 15cv-01143-AB became *Kempton v. Clark* 15-cv-01143-PSG. However, there was never any attempt to relate *California Court of Appeal Second Appellate District et al v. ASAP Services Inc. et al* 15-cv-01261-MMM to *Kempton v. Clark* 12-cv-10046-PSG. (See BS 62-63).

d. Specifying an erroneous basis to deny a related transfer was to maintain the prejudicial direct assignment to Judge Real that was not in accord with the General Order of the court concerning case related transfers or random reassignment following recusal.

e. This is one more of the irregularities and pattern concerning prejudicial case assignment and transfers involving persons associated with the VRA Case. Over one-half of the judges in the Central District have recused themselves from cases involving VRA members. The judges have properly made an assessment required by law and are not indicating anything about the merits of the case. Therefore, given the issues involved in the challenges to section 5 of SBX 211 and the significant public interest to be served, it is important that the general public perceive the tribunal and decision makers to be impartial.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 29, 2015.

s/ Nina Ringgold

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2015, I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

AFFIDAVIT ON PETITION FOR MANDAMUS, SUPERVISORY OR ADVISORY MANDAMUS; AND PETITION FOR INTERCIRCUIT ASSIGNMENT UNDER 28 U.S.C. § 292

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on April 30, 2015 at Los Angeles, California.

s/ Matthew Melaragno

9th Cir. Civ. Case No. _____
USDC Case No. CV15-01261 R (Ex)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAW OFFICES OF NINA RINGGOLD, NINA RINGGOLD, ESQ.
Petitioner and Defendant,

ASAP SERVICES, INC. dba ASAP COPY AND PRINT, ALI TAZHIBI
Defendants,

v.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, JUSTICE ROGER BOREN as an individual and in the administrative capacity as Administrative Presiding Justice of the California Court of Appeal Second Appellate District, BECKY FISHER as an individual and in the administrative capacity as Deputy Clerk of Court, et al
Real Parties In Interest.

From the United States District Court for the Central District
The Honorable Manuel Real

STATEMENT OF RELATED CASES

NINA RINGGOLD, Esq. (SBN #133735)
Attorney for Petitioners
Law Offices of Nina R. Ringgold
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409,Fax: (866) 340-4312
nrringgold@aol.com

STATEMENT OF RELATED CASES

Petitioners submits that the following cases are related or may be related pursuant to Circuit Rule 28-2.6.

United States District Court for the Eastern District of California
Class Action –Voting Rights Act, California Political Reform Act, California Whistleblower Protection Act

Law Offices of Nina Ringgold and Current Clients Thereof v. Jerry Brown et al., USDC (Eastern District) Case No. 12-cv-00717

ASAP Copy ad Print

Canon Business Solutions et al v. ASAP Copy and Print et al
USCA 9th Cir. Appeal Docket Number: 13-55307, 13-55803 (Removal)
(USDC (C.D. Cal)) 12cv-10165-ABC-PJW

ASAP Copy and Print et al v. Jerry Brown et al
USCA 9th Cir. Appeal Docket Number: 14-56603

Aubry Family Trust

Justin Ringgold-Lockhart et al. v. Myer Sankary et al.
USCA 9th Cir. Appeal Docket Number 11-57247
(USDC (C.D. Cal)) 09-cv-09215-R-RC

Myer Sankary v. Nina Ringgold in her capacity as named trustee of inter vivos Trust, Justin Ringgold-Lockhart, Nina Ringgold
USCA 9th Cir. Appeal Docket Number: 13-55063 (Removal)
(USDC (C.D. Cal)) 12-cv-08905-R-PLA

Justin Ringgold-Lockhart et al. v. County of Los Angeles et al
USCA 9th Cir. Appeal Docket Number 15-55045
(USDC (C.D. Cal)) 11-cv-01725-R-PLA

Justin Ringgold-Lockhart et al. v. County of Los Angeles et al
USCA 9th Cir. Docket Number 15-70989 (Original Proceeding)
(USDC (C.D. Cal)) 11-cv-01725-R-PLA

Greta Curtis and Law Office of Greta Curtis

Myer Sankary, California Court of Appeal Second Appellate District Division Five, Presiding Justice Paul Turner v. Greta Curtis, Esq. Law Offices of Greta Curtis et al.
USCA 9th Cir. Appeal Docket Number: 13-55040 (Removal)

Nathalee Evans and Dorian Carter

Carter v. Nathalee Evans, Tracy Sheen/Nathalee Evans v. Tracy Sheen
USCA 9th Cir. Appeal Docket Number: 13-55049 (Removal)
(USDC (C.D. Cal)) 12-cv-10300-PA-MRW)

Nathalee Evans, Dorian Carter v. Jerry Brown et al
USCA 9th Cir. Appeal Docket Number: 14-56274

Nathalee Evans

McCullough as Special Administrator, Administrator with Will Annexed v. Nathalee Evans as Named Executor and Testamentary Trustee
USCA 9th Cir. Appeal Docket Number: 13-55349, 13-55351 (Removal)
(USDC (C.D. Cal)) 12-cv-8433-MWF-E, 12-cv-10303-MWF-E)

Nazie Azam

Ninth Circuit/BAP/District Court
Arising from Bankruptcy

U.S. Bank National Association as Trustee v. Nazie Azam
USCA 9th Cir. Appeal Docket Number: 14-55523
(U.S. Bankruptcy Ct. (C.D. Cal)) 13-bk-14339-TA)

Nazie Azam v. Bank of America, National Association/
U.S. Bank National Association as Trustee v. Nazie Azam
USCA 9th Cir. Appeal (BAP) Docket Number: 13-1345, 13-1538, 14-1136 , (U.S. Bankruptcy Ct. (C.D. Cal)) 13-bk14339-TA, 13ap-01229-TA)

Cornelius, Marian, and Lisa Turner

Hartford et al v. Cornelius Turner et al
USCA 9th Cir. Appeal Docket Number: 13-55039 (Removal)
(USDC (C.D. Cal.) 12-cv-10434-PA-E)

Hartford et al v. Cornelius Turner et al
USCA 9th Cir. Appeal Docket Number: 14-55361 (Removal)
(USDC (C.D. Cal.) 13-cv-08361-PA-E)

The Rule Company Inc. v. Amy P. Lee, Esq. et al
USCA 9th Cir. Appeal Docket Number: 14-56731
(USDC (C.D. Cal.) 13-cv-08361-PA-E)

Dated: April 28, 2015

LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold, Esq.
Nina Ringgold, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on April 29~~xx~~30, 2015 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

STATEMENT OF RELATED CASES

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on April 29~~xx~~30, 2015 at Los Angeles, California.

s/ Matthew Melaragno

APPENDIX 29

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUSTIN RINGGOLD-LOCKHART and NINA RINGGOLD, Plaintiffs - Appellants, v. MYER J. SANKARY; et al., Defendants - Appellees.	No. 11-57247 D.C. No. 2:09-cv-09215-R-RC Central District of California, Los Angeles ORDER

Before: REINHARDT, McKEOWN, and M. SMITH, Circuit Judges.

Appellants' emergency "motion for stay and injunction" is denied. *See Nken v. Holder*, 556 U.S. 418 (2009). Additionally, all requests contained in docket entry 77 are denied.

If appellants or appellants' counsel file any request for relief that is substantially similar to the relief requested in appellants' emergency motion in any case pending in this court, that request will also be denied.

ELF/MOATT

APPENDIX 30

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: JUSTIN RINGGOLD-LOCKHART and NINA RINGGOLD.	No. 15-70989 D.C. No. 2:11-cv-01725-R-PLA Central District of California, Los Angeles
JUSTIN RINGGOLD-LOCKHART and NINA RINGGOLD, Petitioners, v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES, Respondent, JERRY BROWN, in his Official Capacity as Governor of the State of California; et al., Real Parties in Interest.	ORDER

Before: McKEOWN, PAEZ, and TALLMAN, Circuit Judges.

Petitioners' "petition for mandamus, supervisory or advisory mandamus, and for stay of order entered on January 8, 2015, and for other appropriate relief;

CC/MOATT

petition to recall mandate as to appeals in District Court case No. CV11-01725 R (PLA); and petition for intercircuit assignment under 28 U.S.C. § 292" is denied. Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

Petitioners' motion to proceed in forma pauperis is denied as moot.

The motion to file the Form 4 financial affidavits under seal is denied. Within 14 days from the date of this order, petitioners may file a notice in this court withdrawing the application to proceed in forma pauperis for this petition. Otherwise, the filings will be unsealed in this court.

No further filings will be entertained in this closed case.

DENIED.

APPENDIX 31

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: ASAP SERVICES, INC, FKA Ali Tazhibi, DBA ASAP Copy and Print; et al.	No. 15-71321
NINA RINGGOLD; et al., Petitioners, v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES, Respondent, CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT; et al., Real Parties in Interest.	D.C. No. 2:15-cv-01261-R-E Central District of California, Los Angeles ORDER

Before: HAWKINS, WATFORD, and HURWITZ, Circuit Judges.

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

No further filings will be entertained in this closed case.

DENIED.

AC/MOATT

APPENDIX 32

9th Cir. Civ. Case No. 15-55818
USDC Case No. CV15-01261 R (Ex)

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, ROGER BOREN, as an individual and in the administrative capacity as Administrative Presiding Justice of the California court of appeal Second Appellate District; BECKY FISHER, as an individual and in the Administrative capacity as a Deputy Clerk of the Court,
Plaintiffs - Appellees,

v.

ASAP SERVICES, INC. dba ASAP COPY AND PRINT, ALI TAZHIBI, LAW OFFICES OF NINA RINGGOLD
Defendants-Appellants,

From the United States District Court for the Central District
The Honorable Manuel Real

APPELLANTS' REQUEST FOR JUDICIAL NOTICE FILED IN CONJUNCTION WITH RESPONSE TO ORDER TO SHOW CAUSE DATED APRIL 25, 2016

NINA RINGGOLD, Esq. (SBN #133735)
Attorney for Appellants
Law Offices of Nina R. Ringgold
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409,Fax: (866) 340-4312
nrringgold@aol.com

TO THE HONORABLE JUDGES OF THE NINTH CIRCUIT COURT OF APPEALS

Appellants ASAP Services, Inc., Ali Tazhibi ("Tazhibi") (collectively "ASAP"), and Nina Ringgold in her capacity as counsel of record and the Law Office of Nina Ringgold ("Ringgold") file this request for judicial notice of documents filed in this court pursuant to FRE 201.

1. **Dated: 2.17.14.** Appellant's Request for Judicial Notice in USCA 9th Cir.13-55307 & 13-55803 (Dkt 44) (identifying court records that Justice Boren and Clerk Fisher removed from courthouse so they would be unavailable to the California Supreme Court)(identifying documents showing that during prior petition for removal and during the voting rights case in which client was one of the lead plaintiffs that district court judge, Judge Collins, was seeking judicial appointment which required approval of three member Commission

on Judicial Appointments that included Judge Boren[1])(prior removal did not include direct petition independent of removal)

2. **Dated: 6.14.15.** Appellants' Request for Judicial Notice No. 1 in USCA 9th Cir. 14-56603 (Dkt 20)(identifying court records showing that clients of law office were treated as "vexatious by association" with the law office and its own attorneys in voting rights case)(a Second member on the Commission on Judicial Appointments was making this erroneous claim)

3. **Dated: 12.12.15.** Appellants' Second Supplemental Excerpts of Record After Ninth Circuit Unsealed Records on District Court's prior order of "no good cause" for sealing in USCA 9th Cir. 14-56603 (Dkt 82)(identifying court records showing that Ninth Circuit unsealed records yet appellants are still unable to use these records whether sealed or unsealed in dispositive evidence in contested proceedings in the state court)(also they were unable to use dispositive evidence by administrative action of Justice Boren and

[1] See http://www.courts.ca.gov/5367.htm

Clerk Fisher as to administrative procedures that related to requests for accommodation for disability by counsel of record during a medical emergency).

Dated: May 22, 2016

LAW OFFICE OF NINA RINGGOLD

By: /s/ Nina Ringgold_____
Nina Ringgold, Esq.
Attorney For Appellants

EXHIBIT 1

9th Cir. Civ. Case No. 13-55307 & 13-55803
USDC Case No. 2:12-CV-10165-ABC-PJW

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CANON BUSINESS SOLUTIONS, INC. et al.,

Plaintiffs-Appellees,

v.

ASAP COPY AND PRINT, et al.

Defendants-Appellants.

From the United States District Court for the Central District
The Honorable Audrey Collins

APPELLANTS' MOTION FOR JUDICIAL NOTICE

NINA RINGGOLD, Esq. (SBN #133735)
Attorney for Appellant
Law Offices of Nina R. Ringgold
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409

DECLARATION ON REQUEST FOR JUDICIAL NOTICE

1. I am the attorney of record for the appellants. The matters set forth in this declaration are true of my own knowledge, and if called as a witness I could and would testify competently thereto.

2. Appellants request judicial notice pursuant to the Federal Rules of Evidence, Rule 201, of the documents listed below. Based on my personal knowledge I authenticate the documents which are included in the request for judicial notice.

EXHIBIT NO.	BATES STAMP NO.	DATE	INTERNAL EX. NO. WITHIN DOCUMENT	ITEM DESCRIPTION
1	RJN0001-RJN0007	October 2007		Final Report of Probate Conservatorship Task Force Chair, Hon. Roger W. Boren (Administrative PJ of Cal. Court of Appeal Second Appellate District), Member, Hon. Aviva K. Bobb (also trial judge in Aubry Family Trust proceedings)

2	RJN0008-RJN0041	12/10/10 10/20/10		Notice of Entry of Judgment, Judgment, and Order on Motion for Summary Judgment and Summary Adjudication In *Candace Cooper v. Controller of the State of California* (Retired Justice of the California Court of Appeal Second Appellate District), Los Angeles Superior Court Case No. BC42491
3	RJN0042-RJN0043	2/28/12		California Supreme Court's Denial of Petition of Review In *Candace Cooper v. Controller of the State of California,* California Court of Appeal Case No. B230028, Supreme Court Case No. S200215
3/21/12 *Law Offices of Nina Ringgold and All Current Clients Thereof v. Jerry Brown et al* 2:12-cv-00717 JAM (e.g. Declaratory, Injunctive Relief, Voting Rights Act Claims)				
1/24/13 **Remand Order – in this appeal** **(Excerpts of Record -v1 Ex 2 BS 4-9)**				
3/25/13 **Order Denying Motion To Vacate and for Stay- in this appeal** **(Excerpts of Record –v1 Ex 1 BS 1-3)**				
4/24/13 **Sanction and Referral Order – in this appeal** **(Excerpts of Record v1 Ex 1A BS 1.1-1.6)**				

4	RJN0044-RJN0111	6/13/13		Request for Judicial Notice or In the Alternative for Grant and Transfer In *ASAP Copy and Print et al v. Canon Business Solutions et al* California Court of Appeal Case No. B2323802, Supreme Court Case No. S211371 (Opening Brief In Court of Appeal at v5 Ex 33 BS 970-1048) filed 3/12/12)
			Ex 1 RJN0049-RJN0050	1/31/11 Cancellation of Writ of Review of Denial of Accommodation for Disability Under CRC 1.100 (g) (2) after assigned to panel of Judges by Hon. Roger Boren, California Court of Appeal Second Appellate District B230553 *Ringgold v. Superior Court (ASAP Copy and Print)*
			Ex 2 RJN0051-RJN0052	1/31/11 Cancellation of Exhibits to Writ of Review Under CRC 1.100 (g)(2) after assigned to panel of Judges by Hon. Roger Boren, California Court of Appeal Second Appellate District B230553 *Ringgold v. Superior Court (ASAP Copy and Print)*
			Ex 3 RJN0053-RJN0054	3/17/11 Clerk's Notice Returning Original Cancelled Writ of Review and Exhibits returned

				based on order of Hon. Roger Boren acting alone, California Court of Appeal Second Appellate District B230553 *Ringgold v. Superior Court (ASAP Copy and Print)*
			Ex 4 RJN0056-RJN0060	4/1/11 Supreme Court Clerk's Notification Returning Application requesting to file writ of review and exhibits under CRC 1.100 (g) (2) on petition for review in California Supreme Court, California Court of Appeal Second Appellate District B230553 *Ringgold v. Superior Court (ASAP Copy and Print)*
			Ex 5 RJN061-RJN0063	4/11/11 Correspondence to Hon. Justice Boren returning cancelled original writ of review and exhibits under CRC 1.100 (g)(2), California Court of Appeal Second Appellate District B230553 *Ringgold v. Superior Court (ASAP Copy and Print)*

			Ex 6 RJN0064-RJN0065	4/13/11 Order denying petition for review with Justice Kennard indicating that review should be granted, California Court of Appeal Second Appellate District B230553, California Supreme Court S19797 *Ringgold v. Superior Court (ASAP Copy and Print)*
			Ex 7 RJN0066-RJN0067	7/31/13 Docket 3/29/11-4/19/11 indicating that Court of Appeal provided record to the California Supreme Court on the day the petition for review was denied
5	RJN0070-RJN0072	7/31/13		Judgment in *Arthur Gilbert v. Controller of the State of California* (Current Justice of the California Court of Appeal Second Appellate District), Los Angeles Superior Court Case No. BC487949
6	RJN0073-RJN0075	7/31/13		Notice of Entry of Judgment in *Arthur Gilbert v. Controller of the State of California* (Current Justice of the California Court of Appeal Second Appellate District), Los Angeles Superior Court Case No. BC487949

7	RJN0076-RJN0098	7/5/13		Statement of Decision in *Arthur Gilbert v. Controller of the State of California* (Current Justice of the California Court of Appeal Second Appellate District), Los Angeles Superior Court Case No. BC487949
8	RJN0100-RJN0102	10/11/13		Docket in United States Supreme Court No. 13-605 Showing Application for extension of time granted by Justice Kennedy in Supreme Court S19797 *ASAP Copy and Print et al v. Canon Business Solutions et al* (extension specifying existence of indirect challenge by Justice Gilbert in his home court)
9	RJN0103-RJN0105	10/14/13		Docket in *Arthur Gilbert v. Controller of the State of California* granting request to transfer out of California Court of Appeal Second Appellate District (home court of Justice Gilbert) to Fourth Appellate District
10	RJN0106-RJN0112	11/6/13		Arthur Gilbert as author of decision in *Vesco v. Superior Court* re Accommodation for Disability under CRC 1.100

11	RJN0113-RJN0115	12/17/13		Article Regarding Judge Audrey Collins Seeking Judicial Appointment in California Court of Appeal for the Second Appellate District
12	RJN0116-RJN0118	12/19/13		Article Regarding Judge Audrey Collins Seeking Judicial Appointment in California Court of Appeal for the Second Appellate District

3. Neither my office nor my clients were aware during the underlying proceedings that Judge Audrey Collins was seeking an appointment in the California Court of Appeal for the Second Appellate District.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on February 12, 2014.

s/ Nina R. Ringgold
Nina R. Ringgold, Esq.

EXHIBIT 1

Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases

FINAL REPORT OF THE PROBATE CONSERVATORSHIP TASK FORCE

OCTOBER 2007

JUDICIAL COUNCIL OF CALIFORNIA

PROBATE CONSERVATORSHIP TASK FORCE

Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases

FINAL REPORT OF THE PROBATE CONSERVATORSHIP TASK FORCE

JUDICIAL COUNCIL OF CALIFORNIA

PROBATE CONSERVATORSHIP TASK FORCE

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
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Regional Administrative Director
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Court of Appeal
Second Appellate District

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Hon. Aviva K. Bobb
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EXHIBIT 2

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FILED
LOS ANGELES SUPERIOR COURT

DEC 10 2010

JOHN A. CLARKE, CLERK
BY RAUL SANCHEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BY FAX

CANDACE COOPER, Plaintiff, v. **CONTROLLER OF THE STATE OF CALIFORNIA and SECRETARY OF THE STATE OF CALIFORNIA,** Defendants.	Case No. BC425491 **NOTICE OF ENTRY OF JUDGMENT** Dept: 33 Judge: The Honorable Charles F. Palmer Action Filed: November 6, 2009

///

///

PLEASE TAKE NOTICE that on November 22, 2010, the Court entered the attached Judgment.

Dated: December 10, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
STEPHEN P. ACQUISTO
Supervising Deputy Attorney General

ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Defendants

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EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE § 6103

ORIGINAL FILED

NOV 2 2 2010

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CANDACE COOPER, Plaintiff, v. **CONTROLLER OF THE STATE OF CALIFORNIA and SECRETARY OF THE STATE OF CALIFORNIA,** Defendants.	Case No. BC425491 **~~[PROPOSED]~~ JUDGMENT** Date: None Time: None Dept.: 33 Judge: The Honorable Charles F. Palmer Trial Date: November 8, 2010 Action Filed: November 6, 2009

The motion for summary judgment of Plaintiff Candace Cooper and the motion for summary judgment, or in the alternative summary adjudication, of Defendant Controller of the State of California came on regularly for hearing upon notice on September 9, 2010, before the Honorable Charles F. Palmer, in Department 33 of the court identified above, located at the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, California. Further hearing on the motions occurred on September 30. Elwood Lui and Erica L. Reilley appeared on behalf of Cooper. Anthony R. Hakl, Deputy Attorney General, appeared on behalf of the Controller. Following oral argument, the Court took the matter under submission.

Having reviewed and considered all papers in support of and in opposition to the motions, and after hearing oral argument, the Court issued its Order Re Motions for Summary Judgment and Summary Adjudication, consisting of twenty-seven pages, on October 20. For the reasons and to the extent set forth in that Order, which is attached hereto and incorporated by reference, and there being no disputed material facts, the Court finds, adjudges and orders that the Controller is entitled to judgment in his favor as follows:

1. Cooper's motion for summary judgment is denied;

2. The Controller's motion for summary judgment is denied;

3. The Controller's motion for summary adjudication as to the first cause of action is granted in part and denied in part; and

4. The Controller's motion for summary adjudication as to the second cause of action is granted.

IT IS SO ORDERED.

Dated: NOV 22 2010

CHARLES F. PALMER

The Honorable Charles F. Palmer
Judge of the Superior Court

Approved as to form:

Erica L. Reilley
Attorney for Plaintiff Candace Cooper

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

CANDACE COOPER,
Plaintiff,
vs.
CONTROLLER OF THE STATE OF CALIFORNIA, ET.AL.
Defendants

Case No. BC425491

Order Re Motions for Summary Judgment and Summary Adjudication

Background

Plaintiff Candace Cooper ("Justice Cooper") was appointed to the Court of Appeal in 1999. In 2006, Justice Cooper was elected to a twelve year term, pursuant to Article VI, Section 16 of the California Constitution ("Section 16"). Justice Cooper's (Ret.) Separate Statement of Undisputed Material Facts, etc. ("Justice Cooper's UMF") at 1 and 2. Justice Cooper resigned and retired from the Court of Appeal, effective December 31, 2008. Justice Cooper's UMF 3. At the time of her retirement, their remained approximately 10 years of the term to which she had been elected. *Ibid.* Justice Cooper has had a long-standing interest in teaching at the university level and would like to "seize upon a teaching opportunity at a public institution during her retirement…but is reluctant to do so because she is concerned that a few non-judicial interpretations of Article VI, Section 17 of the California Constitution ("Section 17") have construed the provision so as to preclude her from any public employment during the remainder of the term for which she was elected—that is, until the year 2018."

Verified Complaint for Declaratory Relief, filed herein November 6, 2009 (the "Complaint") at para. 18. She is further concerned that "acceptance of such public employment could result in her forfeiting all her State retirement benefits or other vested benefits (health, dental, etc.) to which she is entitled." *Ibid.*

The Complaint seeks the following judicial declarations: (1) that a proper construction of Section17 requires that its bar against public employment applies only to sitting judges or justices and not to judges or justices who have resigned or retired from the bench and (2) if Section 17 is construed as a bar to post-retirement public employment, Section 17 violates equal protection insofar as it treats similarly situated judges or justices differently and such differential treatment bears no rational relationship to any legitimate state purpose. Complaint, p.8. The Complaint names as defendants the Controller of the State of California (the "Controller") and the Secretary of State of the State of California (the "Secretary of State"). The Secretary of State was dismissed without prejudice on March 23, 2010.

Justice Cooper has moved for summary judgment; the Controller has moved for summary judgment or, in the alternative, summary adjudication. There are no disputed material facts. See Defendant's Separate Statement of undisputed Material Facts in Opposition to Plaintiff's Motion for Summary Judgment, filed herein August 12, 2010 and Justice Cooper's (Ret.) Response to Separate Statement of Undisputed Material Facts in Support of Defendant's Motion for Summary Judgment, or in the Alternative Summary Adjudication, filed herein August 12, 2010. In that there are no disputed material facts, the issues presented by the pending motions are purely legal and the case is ripe for resolution by summary judgment.

Pertinent Provisions of the California Constitution

The pertinent provisions of the California Constitution for purposes of these motions are Article VI, section 16 ("Section 16") and Article VI, section 17 ("Section 17").

Section 16 provides, in pertinent part:

"(a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and place as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

"...

"(c) Terms of judges of superior courts are six years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

"(d) (1) Within 30 days before August 16 preceding expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected...

(2) The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies....

Section 17 provides, in pertinent part:

"A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge....A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office."

It is undisputed that "judges of a court of record" encompasses Superior Court judges and justices of the Supreme Court and Courts of Appeal.

Textual Analysis of Sections 16 and 17

The first declaration sought by Justice Cooper—that Section 17's ineligibility provision applies only to sitting judges and not to resigned or retired judges—requires a determination of the meaning of the word "term" as it is used in Section 17 ("A judge of a court of record … during the term for which the judge was selected is ineligible for public employment …") Justice Cooper asserts, as she must, that the term to which a justice is elected ends upon the justice's resignation or retirement. If the term does not end upon resignation or retirement, under Section 17, the term necessarily continues and the retired justice remains ineligible for public employment.

Since 1849, Article VI of the California Constitution has provided for the judicial branch of government. *Lungren v. Davis* (1991) 234 Cal.App.3d 806, 810 and fn.3. The present Section 16 addresses the election and appointment of judges of the Supreme Court, the Court of Appeal, and the superior court, defines their terms, and provides for filling vacancies in those courts. *Ibid.* The present Section 17 addresses restrictions on employment by judges of courts of record, including justices of the Court of Appeal. Section 17 does not define the word "term." The only definition of "term" in Article VI is found in Section 16, the section that immediately precedes Section 17.

"It is a cardinal rule to be applied to the interpretation of particular words, phrases, or clauses in a statute or a constitution that the entire substance of the instrument or of that portion therof which has relation to the subject under review should be looked

to in order to determine the scope and purpose of the particular provision therein of which such words, phrases, or clauses form a part; and in order also to determine the particular intent of the framers of the instrument in that portion thereof wherein such words, phrases, or clauses appear." *Wallace v. Payne* (1925) 197 Cal.539, 544. This applies even where the particular part of the Constitution at issue was added or amended subsequently. *Lungren v. Davis, supra,* 234 Cal.App.3d at 823. "There can be no question then that words and phrases within article VI of the Constitution must be interpreted in the light of other provisions of that article [Citations] ... [T]here is nothing in the history of these two sections [Sections 16 and 17] which indicates or even suggests that the word "term" was meant to have one meaning in section 16 and another in 17." *Ibid.*

Section 16 (a) defines the term of justices of the Supreme Court and the Court of Appeal. It provides: "Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term." Thus, "term" is defined as 12 years and the exception ("except that a judge elected to an unexpired term serves the remainder of the term") on its face contemplates that when a justice elected to a term ceases to hold that position, the successor justice will be elected to *an unexpired term* and serves *the remainder of the term*. If a term ended upon retirement, resignation, or other vacation of judicial office, there would be neither an unexpired term nor a remainder of the term. To sum up, Section 16 (a) defines "term" for justices of the Supreme Court and Court of Appeal as 12 years commencing the Monday following January 1 following a justice's election, unless there is an "unexpired term" which could only occur because the prior occupant

failed to serve the full term to which she was elected, in which case, the successor justice serves the remainder of the term.

It should be noted that Section 16's definition of "term" for superior court judges is markedly different from that provided for justices. Section 16 (c), set forth above, provides that the terms of superior court judges are 6 years beginning the Monday after January 1 following their election and that a vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy. Thus, not only is the term half that of a justice, but section 16 (c) expressly provides that an election following a vacancy is to a "full term." There is no reference to an "unexpired term" or "remainder of the term."

Applying Section 16 (a)'s definition of "term" for Supreme Court and Court of Appeal justices to the ineligibility provision of Section 17 ("...during the term for which the judge was elected is ineligible for public employment or public office..."), the language of Section 17 does not tie ineligibility for public employment to the justice's service in office or the time the justice holds office, but to the "term for which the judge was selected." Section 16 defines that term as 12 years, unless the justice was elected to an unexpired term, in which case it is the unexpired term.

Moreover, Section 17 itself distinguishes between a prohibition tied to a justice's service in office and a prohibition tied to the term to which the justice was elected. The prohibition on the practice of law by its terms only applies to sitting judges and justices ("A judge of a court of record may not practice law"). This prohibition is immediately followed by the language rendering judges and justices ineligible for public employment or public office ("and during the term for which the judge was selected is ineligible for

public employment or public office...." Presumably, had the drafters and voters intended the ineligibility provision to apply only to sitting justices, they need only to have deleted the phrase "during the term for which the judge was selected" and the operative language would have read "A judge of a court of record may not practice law and is ineligible for public employment or public office..." The fact that Section 17 makes this distinction in the same sentence which creates the ineligibility provision further evidences an intent to tie the ineligibility provision not to the justice's service in office, but to the term to which the justice was elected. Thus, absent some contrary intent reflected in the legislative history of Article VI or judicial precedent, it appears a justice who resigns, retires, or leaves office for any other reason, remains ineligible for public employment or public office until the expiration of the most recent term to which she was elected.

The History of Constitutional Revisions and Judicial Authorities

The parties have not identified, and the court has been unable to find, any case in which an appellate court has considered whether the ineligibility provision of Section 17 or its predecessors applied to justices of the Court of Appeal or Supreme Court who have retired or resigned. However, the Supreme Court and the Court of Appeal have addressed related issues which may be of assistance in determining the meaning of those provisions. Similarly, the history of the ineligibility provision in its various forms throughout the State's history may be pertinent to a determination of the issues before the court.

In divining the "legislative history" of the ineligibility provision, the court relies upon the submissions of the parties as well as the comprehensive summary of that history

contained in *Lungren v. Davis, supra,* 234 Cal.App.3d at 811-819. *Lungren* cautions that it focuses on constitutional provisions and decisional authorities concerned with the office of superior court judge and that

> "while there are many similarities between the office of superior court judge and justice of the Supreme Court or Court of Appeal, there are also many differences. For example, appellate justices must stand for election, but they always run unopposed (Section 16(d)). Upon their initial election they succeed to the unexpired term of ther predecessor, and thereafter their terms are 12 years. (Section 16(a)) Due to these and other differences, authorities concerned with appellate justices are not strictly analogous to superior court judges." *Lungren v. Davis, supra,* 234 Cal.App.3d at 818-819.

With this admonition in mind, the court has endeavored to avoid analogizing authorities concerned with superior court judges to appellate justices where the differences between the offices render them inapplicable or suspect.

California's initial 1849 Constitution had a provision in Article VI, section 16 that "The Justices of the Supreme Court and District Judges shall be ineligible to any other office during the term for which they shall have been elected." *Lungren v. Davis, supra,* 234 Cal.App.3d at 811. The position of district judge was analogous, but not identical, to the position of superior court judge today. *Ibid.* For convenience of reference, the court will refer to the constitutional provision making justice or judges ineligible for public office or public employment, as that provision was amended from time to time, as the "ineligibility provision."

In 1858 and 1859, the California Supreme Court considered two cases concerning the term to which a district judge was elected. *People v. Weller* (1858) 11 Cal.77 and *People v. Burbank* (1859) 12 Cal. 378. In *Burbank*, in considering the issue presented, the court discussed the purpose of, among other constitutional provisions, the above-described provision in the 1849 Constitution making Supreme Court justices and district

judges ineligible for other office, and explained these provisions were intended to secure the impartiality and independence of the judiciary:

"The Constitution of California shows a wise and peculiar solicitude to secure the independence of the Judiciary. For that purpose, it provides that the Supreme and District Judges shall not be eligible to any other office during the terms for which they shall have been elected; and further, that their compensation shall not be increased or diminished during that term." *People v. Burbank, supra,* 12 Cal at 391-392.

In 1866, the California Supreme Court considered whether the Legislature could make the Chief Justice a trustee of the State Library, a position which the Court found to be "within the sphere of the executive department of the Government." *People v. Sanderson* (1866) 30 Cal. 160, 168. In holding that the Legislature could not do so, the Court relied primarily upon the separation of powers provision then in the Constitution, but also referenced the ineligibility provision and emphasized that the same policies underlie both:

"This provision of the Constitution [the separation of powers provision], so far as it relates to the judicial department of the State, is, in our judgment, eminently wise. One of its objects seems to have been to confine Judges to the performance of judicial duties; and another to secure them from entangling alliances with matters concerning which they may be called upon to sit in judgment; and another still to save them from the temptation to use their vantage ground of position and influence to gain for themselves positions and places from which judicial propriety should of itself induce them to refrain. *In the same spirit was conceived the sixteenth section of Article VI. of the Constitution, which declares that 'The Justices of the Supreme Court, and the District Judges, and the County Judges shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.'* *Ibid.* (Emphasis added).

This appears to be the only instance in which an appellate court considered the application of the ineligibility provision to justices of the Supreme Court or Court of Appeal.

In 1879, the Constitution was revised to create the present superior court system and the ineligibility provision was moved to Article VI, section 18 and revised to provide,

in pertinent part, that justices of the Supreme Court and superior court judges "shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected."

In 1904, Article VI, section 18 was amended to make the ineligibility provision applicable to justices of the Court of Appeal. In 1924, Article VI, section 18 was amended to add municipal court judges to the prohibition on holding public office and to revise the language of the provision:

"The justices of the supreme court, and the district courts of appeal, and the judges of the superior courts and of the municipal courts shall be ineligible to any other office or public employment than a judicial office or appointment during the term for which they shall have been elected or appointed, and no justice or judge of a court of record shall practice law in any court of the state during his continuance in office." *Lungren v. Davis, supra,* 234 Cal.App.3d at 812.

This provision very clearly distinguished between the time of applicability of the ineligibility provision ("during the term for which they shall have been elected or appointed") and the practice of law ("during his continuance in office"). As previously noted, this distinction, in somewhat modified language continues in Section 17 today.

In 1930, Article VI, section 18 was again amended to add the following exception to the ineligibility provision:

"*provided, however*, that a judge of the superior court or of a municipal court shall be eligible to election or appointment to a public office during the time for which he may be elected, and the acceptance of any other office shall be deemed to be a resignation from the office held by said judge." (Italics in original). *Lungren v. Davis, supra*, 234 Cal.App.3d at 813.

Thus, superior and municipal court justices—but not justices of the Supreme Court or Court of Appeal--were affirmatively made eligible for election or appointment to public office. The court is aware of no authority or legislative history addressing the basis for the distinction in the 1930 amendment between trial court judges and justices of

the Supreme Court and the Court of Appeal. Regarding the purpose of this change, the members of the Assembly who authored the ballot argument in favor of the amendment asserted that the provision "permits a judge to be elected or appointed to other public office by resigning his judicial position thus making available for wider public service to the people the best judicial minds in the state." Defendants' Request for Judicial Notice ("RJN"), Exh. 7. Ballot summary, arguments and analysis "may be helpful in determining the probable meaning of uncertain language." *Amador Valley Joint Union High Sch. Dist. V. State Bd. Of Equalizaiton* (1978) 22 Cal.3d 2008, 245-246. In light of the distinction between trial court judges and justices, the ballot argument's stated rationale is puzzling in that one would hope the justices of the Supreme Court and Court of Appeal would be among the "best judicial minds in the state." Nonetheless, the ballot argument does carry with it the inference that in the absence of the amendment, superior court and municipal court judges could not be elected to public office by resigning their judicial position.

In 1963 the Legislature created a Constitutional Revision Commission to recommend desirable constitutional changes to the Legislature. *Alex v. County of Los Angeles* (1973) 35 Cal.App.3d 994, 948, fn.1. The Commission established a subcommittee on the general revision of Article VI, the judicial article. From the outset of the re-drafting of Article VI, the staff notes of the subcommittee recommended that the ineligibility provision be revised to delete the 1930 exception making a trial court judge eligible for election or appointment to public office, and provide that a trial court judge could be elected to public office upon resignation from judicial office prior to declaration

of candidacy. Staff notes accompanying subsequent drafts reflect that the recommendation continued and stated the rationale for the change:

"The provision that judges of municipal or superior courts are eligible for election or appointment is deleted because detrimental to the administration of justice; *the possibility of an appointment in return for a decision is thereby eliminated.*" Defendant's Request for Judicial Notice ("Defendant's RJN"), Exh.12, p. 51.

Successive drafts of a pending bill may be helpful to interpret a statute if its meaning is unclear; official reports and comments of the Constitution Revision Commission may also be considered. *Carter v. California Dept. of Veteran's Affairs* (2006) 38 Cal.4th 927-928; *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300, 319, fn. 18.

The Constitutional Revision Commission's recommendation that the 1930 exception providing that a judge of the superior court or municipal court was eligible for election or appointment to any other office or public employment be deleted was approved by the Legislature and submitted to the voters; the recommendation that the ineligibility provision be revised to provide that a trial court judge could seek public office only by resigning was changed by the Legislature prior to submission to the voters to provide that trial court judges may become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy and that acceptance of the public office is a resignation of the office of judge. The voters adopted the resulting amendments to the ineligibility provision in 1966.

The 1966 amendments to the Constitution made another change pertinent to the present inquiry—"elected" in the ineligibility provision was changed to "selected." ("and during the term for which the judge was selected"). As explained in *Lungren v. Davis,*

supra, 234 Cal.App.3d at 821-822, this change was necessitated by the expansion of the ineligibility provision's coverage to all judges of a court of record:

"Until 1924, the [ineligibility provision] applied only to justices of Supreme Court and Courts of Appeal and to superior court judges. Throughout the period preceding 1924 the [ineligibility provisions] applied during the term for which the judge was 'elected.' In 1924 the [ineligibility provisions] were enlarged to include judges of the municipal courts. As we have previously noted, judges of the municipal courts do serve fixed and definite terms and an appointee to the municipal court is appointed to finish the unexpired term of the previous judge. [Citations]. Accordingly, if the [ineligibility provisions] of the Consitution were to be enlarged to include judges of the municipal court, then it was necessary to use a word or phrase of greater breadth than the word 'elected.' Indeed, in conjunction with the inclusion of municipal court judges in the [ineligibility provisions] of the Constitution, the reference to the term of [ineligibility] was changed from 'elected' to 'elected or appointed.' In the 1966 constitutional revision, the [ineligibility provisions] were expanded to include all judges of a court of record and the use of the word 'selected' was necessary in order to include all such judges serving a term of office."

In 1988, the voters approved Proposition 94, a legislatively-referred constitutional amendment which, with respect to Section 17, (1) added a part-time teaching exception to the ineligibility provision ("...except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office..."); (2) changed the phrase "the superior court or municipal court" to "a trial court," and, (3) prohibited a judge from earning retirement service credit from a public teaching position while holding judicial office. Defendant's RJN, Exh.20, p.63. With these changes, Proposition 94 brought Section 17 to its current language.

Significantly, the authors of the argument in favor of Proposition 94 in the ballot pamphlet included a member of the Assembly, the President of the California Judges Association, and the President of the State Bar. In explaining the need for Proposition

94, the authors stated their understanding of the scope of Section 17's ineligibility provision:

> "The Constitution prohibits judges of courts of record from accepting public employment or public office outside their judicial position during their term of office. This prohibition has been interpreted to mean that a judge cannot accept a teaching position at a public school, but may accept one at a private school. *The prohibition applies during the time the judge is actually in office and during the entire term for which the judge was selected, even if the judge has resigned part way through the term.*" Controllers RJN, Exh.20, p.64. (Emphasis added.).

Thus, the ballot argument authors apparently understood and acknowledged that a judge's resignation did not render Section 17's ineligibility provision inapplicable, but continued during the entire term to which the judge was elected.

Conclusions As To The Applicability of the Ineligibility Provison To Resigned or Retired Justices of the Court of Appeal

As discussed above, the textual analysis of Sections 16 and 17 indicates, with little ambiguity, that a resigned or retired justice of the Court of Appeal is ineligible for public employment or public office during the balance of the most recent term to which they were elected. In sum, this analysis is as follows:

(1) Section 16 (a) defines the "term" of a justice of the Court of Appeal as "twelve years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term;"

(2) On its face, Section 16 (a) contemplates that upon resignation or other vacation of office, the term to which a justice was most recently elected will continue until completed ("…except that a judge elected to an unexpired term serves the remainder of the term")

(3) Section 16 (a)'s definition of the "term" of a justice applies to Section 17. See *Lungren v. Davis, supra,* 234 Cal.App.3d at 823.

(4) Section 17's utilization of the word "term" ("..during the term for which the judge was selected is ineligible for public employment...") is consistent with the above-described definition of "term" in Section 16;

(5) Section 17 itself distinguishes between a prohibition that continues only during service in office ("A judge of a court of record may not practice law...") and a prohibition that continues for the balance of the term to which the judge was elected ("...and during the term for which the judge was selected is ineligible for public employment...")

(6) Section 16 (c)'s definition of the "term" of a superior court judge differs substantially from Section 16 (a)'s definition of the "term" of a justice in that Section 16 (c) provides that an election following a vacancy is to a "full term," while Section 16 (a) provides that "a judge elected to an unexpired term serves the remainder of the term." This is further indication that the term of a justice continues until it has expired.

There is nothing inconsistent with this analysis or its resulting conclusion in the "legislative history" of the ineligibility provision. Commencing with at least the 1924 amendment and continuing to the present, there has been a distinction between the duration of the prohibition on the practice of law (..."no justice or judge of a court of record shall practice law ... during his continuance

in office") and the ineligibility provision (…"during the term for which they shall have been elected or appointed…"). Indeed, as noted above, the language of the 1924 amendment made the distinction even more unavoidable ("The justices of … the district courts of appeal … shall be ineligible to any other office or public employment than a judicial office or appointment during the term for which they shall have been elected or appointed, and no justice … shall practice law in any court of the state during his continuance in office."). *Lungren v. Davis, supra,* 234 Cal.App.3d at 812.

As discussed above, the ballot argument in favor of the 1930 amendment, which removed superior and municipal court judges from the effect of the ineligibility provision, argued that the amendment permitted "a judge to be elected or appointed to other public office by resigning his judicial position…"). This argument carries with it the inference that in the absence of the amendment, a trial judge could not be eligible for appointment or election to public office and that justices of the Court of Appeal, who were not subject to the 1930 amendment, similarly could not simply resign and accept appointment to public office.

Moreover, as discussed above, the ballot argument in favor of Proposition 94 in 1988, authored by a legislator and the Presidents of the California Judges Association and the State Bar essentially adopted the same interpretation of the duration of the effectiveness of the ineligibility provision—that "it applies during the time the judge is actually in office and during the entire term for which the judge was selected, even if the judge has resigned part way through the term."

Regarding the purposes of the ineligibility provision, as discussed above, since as early as 1859, in *People v. Burbank, supra,* 12 Cal.378 and 1866 in *People v. Sanderson, supra*, 30 Cal. 160, our Supreme Court has emphasized its importance in securing the independence and impartiality of the judiciary. As *Sanderson* made clear, the ineligibility provision was "[i]n the same spirit conceived" as the doctrine of the separation of powers. To be sure, the ineligibility provision also serves the purpose of avoiding a non-judicial employment or office unduly interfering with a judge's judicial duties. *See Abbott v. McNutt* (1933) 318 Cal.225, 229. However, even in *Abott v. McNutt,* after quoting the language of Justice Cardozo relative to a similar provision in New York, our Supreme Court immediately summed up:

> "In other words, it [the ineligibility provision] is intended to exclude judicial officers from such extrajudicial activities as may tend to militate against the free, disinterested and impartial exercise of their judicial functions." 218 Cal. at 229.

In perhaps the most direct statement of the purpose of the ineligibility provision, the staff notes of the Constitutional Revision Commission's committee on the revision of Article VI,

> "the provision that judges of municipal or superior courts are eligible for election or appointment is deleted because detrimental to the administration of justice; the possibility of an appointment in return for a decision is thereby eliminated." Defendants RJN, Exh.12, p.51.

Judicial independence, the separation of powers, and judicial impartiality are critical to our system of justice. The State is a frequent litigant in our courts. The executive branch and, to a more limited extent, the legislative branch, have a multitude of appointments and positions to which a justice or judge could aspire.

The ineligibility provision serves to substantially reduce, if not eliminate, the possibility that a justice in considering cases could be influenced by aspiration to public office or public employment. Limiting the effect of the ineligibility provision to sitting justices would serve to substantially erode its protections in that any justice aspiring to non-judicial office or employment would know that by simply resigning, she would be eligible for the position aspired to. In its grossest form, a justice contemplating, in the words of the Constitutional Revision Commission staff notes, "an appointment in return for a decision," would not be deterred at all, since by simply resigning, the justice would become eligible for the appointment traded for.

Having determined (1) that the text of Sections 16 and 17 contemplates that the effectiveness of the ineligibility provision shall continue following a justice's resignation or retirement until expiration of the last term to which the justice was elected and (2) that the purposes of the ineligibility provision are substantial and would not be served if its effectiveness was limited to sitting justices, there remains the issue of the harshness of its application in the present case. As Justice Cooper points out, while a shorter period of effectiveness, such as the two years of ineligibility imposed following vacation of judicial office in Michigan, may be justified to accomplish the ineligibility purposes, ten years seems excessive. The court finds itself in a difficult quandary in that Legislatures and voters since the state's founding in 1849 have, as to justices of the Supreme Court and Court of Appeal, maintained the ineligibility provision in the Constitution and the appellate courts have consistently found it to serve an

important purpose in preserving the independence of the judiciary. Having found that its effectiveness continues following resignation, the court does not find it appropriate for it to "second-guess" the Constitution as to the proper length of the period of effectiveness because the court finds a shorter period to be better public policy. That responsibility is appropriately placed by our Constitution with the legislative branch or the initiative process and, ultimately with the voters. Thus, while sharing the view that the result in the present and similar circumstances is harsh, if not unfair, the court finds that remedying the degree of harshness is beyond the proper scope of its authority.

Justice Cooper further questions the application of the ineligibility provision to retired or resigned justices because it produces "unreasonable" or "absurd" results. See, e.g., *Pollack v. Hamm* (1970) 3 Cal.3d 264, 273 ("because the language of [a constitutional provision] does not compel the result suggested by petitioner, we are governed by the well established rules that constitutional and statutory provisions be construed consistently with the intent of the adopting body and in such manner s not to produce unreasonable results."); *Barber v. Blue, supra*, at 188 ("we indulge in a presumption that constitutional and legislative provisions were not intended to produce unreasonable results").

First, the text, purposes, and legislative history of the ineligibility provision reflects an intent that it apply to justices who have vacated their judicial office. This distinguishes it from the cases cited by Justice Cooper, where the result of applying the rejected interpretation of a statutory or constitutional provision would have resulted in a determination that was at odds with the intent

or purposes of the provision under consideration or some other important public policy. *See Barber v. Blue, supra,* 65 Cal.2d at 188 (general rule in pertinent section allowing time for an orderly and complete elective process overcomes interpretation which would have resulted in "hit-or-miss" election); *Pollack v. Hamm* (1970) 3 Cal.3d 264, 273 (constitutional provision that contemplates that an opportunity to pass on the qualifications of superior court judges no less than every six years overcomes interpretation that a new vacancy is created each time an appointee vacates the office of judge, thereby making it possible for carefully time resignations to avoid an election indefinitely.)

Second, while the result in this particular case is harsh, it is consistent with the purposes of Section 17. The public policies served by the ineligibility provision are substantial and important: judicial independence, separation of powers and judicial impartiality. Because of the importance of keeping them independent and impartial, justices have a term of 12 years unless elected to an unexpired term. Having an election to the unexpired term furthers the policy of subjecting the judiciary to election; however, justices, unlike superior court judges, run unopposed in confirmation elections, further insulating them from the political sphere. During the term to which they are elected, the compensation of justices may not be reduced. As discussed above, the language of the ineligibility provision as well as its legislative history reflect an intent that its provisions apply after vacation of the office, precisely to avoid justices being affected in their deliberations by aspirations for non-judicial public employment or public office—to avoid the possibility of trading an appointment for a decision, but also to avoid

the more subtle influence of a generalized interest in future government employment. It appears to the court that this can be accomplished in one of three ways (although there may be others): (1) by specifying a specific time period following vacation of office during which a justice would be ineligible for public employment or public office; or, (2) by making it concurrent with the term to which the justice was most recently elected; or, (3) by making it applicable for the lifetime of the justice. California has chosen the second option. Any unfairness of the result is, at least to some extent ameliorated by the fact that justices are at least constructively on notice at the time they stand for election that they will be ineligible for public employment or public office for the duration of that term.

Moreover, with the one exception discussed below, the court does not find the potential results cited by Justice Cooper to be absurd or unreasonable. Section 17 treats all justices the same—they are subject to the ineligibility provision for the duration of the term to which they are elected. Justice Cooper's assertion that it is unreasonable that a justice could practice law privately, but not be a county bus driver ignores one of the critical purposes of the ineligibility provision which is to remove or minimize the possibility that contemplation of future appointment to public non-judicial position in any capacity could influence a justice's decisions. With respect to one of Justice Cooper's examples of positions foreclosed to her by the ineligibility provision, the position of court clerk, the court feels constrained to point out that Section 17 specifically by its terms excludes from the ineligibility provision judicial employment ("other than judicial

employment or judicial office"); thus, a retired judge would be eligible for employment as a court clerk or elsewhere in the judicial branch.

The one exception referred to above, relates to the part-time teaching exception to the ineligibility provision ("except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial duties while holding office"). The court finds that it would be an unreasonable result and contrary to the purposes for which Proposition 94 was adopted in 1988, to permit part-time teaching at a public institution by a sitting justice, but prohibit it when the justice, for whatever reason, vacates her office. Such a result, in light of the part-time teaching exception for sitting justices, in no way advances any purposes of the ineligibility provision or any other significant public policy, while it is contrary to the purposes for which Proposition 94 was adopted in 1988—making judges and justices available to teach at public institutions. Similarly, it would be unreasonable to limit a judicial officer who has vacated her judicial position to part-time teaching, in that a former justice who vacates her position has no judicial duties with which her teaching activities can interfere. The Controller concedes that applying the ineligibility provision to bar retired justices from teaching at a public institution, part-time or full-time would be an unreasonable result. In view of the above, the court finds that a justice of the Court of Appeal who has vacated her judicial position may accept a part-time or full-time teaching position at a public institution during the term to which she was elected. While Justice Cooper did not move for summary adjudication, at the hearing on this matter, Justice Cooper and the Controller stipulated and agreed

that to the extent the court were to conclude that a retired justice may accept a part-time or full-time teaching position, the court may to that extent grant her motion for summary judgment. Accordingly, the court concludes that Justice Cooper's is entitled to a judicial declaration that a retired or resigned justice of the Court of Appeal may accept a part-time or full-time teaching position at a public institution during the term to which the justice was most recently elected consistent with the provisions of Section 17. In all other respects, a retired or resigned Justice of the Court of Appeal is ineligible for public employment or public office during the term to which she was most recently elected.

Conclusions As To Whether The Applicabiilty of the Ineligibility Provision to Resigned or Retired Judges Violates Equal Protection

In her second cause of action, Justice Cooper seeks a judicial declaration that if Section 17 is construed as a bar to post-retirement public employment, it violates the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution, as well as by various provisions of the California Constitution. In her moving papers, she asserts that Section 17 violates equal protection "insofar as its provisions will treat similarly situated judges or justices differently," and describes two examples: (1) a justice who retires at the end of her elected term will face no bar to post-retirement public employment, while a justice who retires at some point during her elected term could face up to a near-twelve-year bar to post-retirement public employment; and, (2) A trial judge could take a leave of absence to run for public office (and could return to her judicial office if unsuccessful), but an appellate justice could

not even resign from the bench to run for office for potentially upwards of twelve years following her resignation.

The United States and California Supreme Courts have adopted the same general description of equal protection:

> "The Equal Protection Clause ... denies to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" *Reed v. Reed* (1971) 404 U.S. 71, 75-76, quoting *Royster Guano Co. v. Virginia* (1920) 253 U.S. 412, 415. See also *Brown v. Merlo* (1973) 8 Cal.3d 855.

As an initial matter, "[t]he first perquisite to a meritorious claim under an equal protection analysis is a showing that the state has imposed a classification which affects two or more *similarly situated* groups in an unequal manner." *In re Eric J.* (1979) 25 Cal.3d 522, 530 (Emphasis in original). See also, *Reed v. Reed, supra,* 404 U.S. at 75-76 and *Royster Guano Company v. Virginia, supra,* 253 U.S. at 415. This is an insurmountable obstacle to Justice Cooper's assertion that the differential effect of the ineligibility provision on different justices of the Court of Appeal is a violation of equal protection. Section 17 does not impose a classification which affects two or more similarly situated groups of justices of the Court of Appeal. As between justices of the Court of Appeal, the ineligibility provision by its terms imposes but one classification: justices of the Court of Appeal. They are all ineligible for public employment or public office during the term to which they were elected. There are not two or more classes of justices imposed by Section 17. Accordingly, there can be no violation of equal protection.

As between justices of the Court of Appeal and superior court judges, section 17 does impose two classifications: justices of the Court of Appeal and superior court judges. Justice Cooper asserts as the differential treatment of these two classifications that "[a] trial judge could take a leave of absence to run for public office (and could return to his judicial office if unsuccessful), but an appellate justice could not even resign from the bench to run for office for potentially upwards of twelve years following her resignation." Justice Cooper's (Ret.) Memorandum of Points and Authorities in Support of Her Motion For Summary Judgment, p.14; Justice Cooper's (Ret.) Opposition, etc., p. 11. However, Justice Cooper lacks standing to assert her inability to seek political office in that she is a retired justice of the Court of Appeal and a retired judge of the superior court, like Justice Cooper, is ineligible for public office during the term to which she was elected. Section 17 authorizes superior court judges to "become" eligible for election to public office only if they have taken a leave of absence without pay prior to filing a declaration of candidacy. ("A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy.") A superior court judge who has not first taken a leave of absence without pay remains ineligible for public office pursuant to Section 17 during the term to which the judge was elected. Put another way, in that a retired superior court judge is not capable of taking a leave of absence without pay, a retired superior court judge, like Justice Cooper, is ineligible for public office during the term to which the judge was elected. There is no differential treatment of Justice

Cooper as compared with a similarly situated superior court judge and Justice Cooper lacks standing to challenge any differential treatment of sitting justices and judges because she is not a sitting justice.

For the reasons discussed above, the Controller's motion for summary adjudication of the second cause of action is GRANTED and the motion for summary judgment of Justice Cooper is DENIED.

Summary of Court's Order

For the reasons set forth above, the motions for summary judgment of Justice Cooper and of the Controller are DENIED. The Controller's motion for summary adjudication as to the first cause of action is GRANTED in part and DENIED in part as follows: the court finds that (1) Justice Cooper is not entitled to a judicial declaration that Section 17 requires that its bar against public employment applies only to sitting judges or justices and not to judges or justices who have resigned or resigned from the bench, but the court finds that (2) Justice Cooper is entitled to a judicial declaration that a justice of the Court of Appeal who has vacated her judicial position may, consistent with Section 17, accept a part-time or full time teaching position at a public institution during the term to

which she was elected. The Controller's motion for summary adjudication as to the second cause of action is GRANTED. The Controller shall submit a proposed form of judgment within 15 days.

DATED: October 20, 2010

Charles F. Palmer
Judge of the Superior Court

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Candace Cooper v. Controller of the State of California, et al.**
No.: **BC425491**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 4, 2010, I served the attached **[PROPOSED] JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Elwood Lui
Jones Day
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071-2300
Telephone: (213) 489-3939
E-Mail: elui@jonesday.com
Attorney for Plaintiff

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 4, 2010, at Sacramento, California.

Brooke C. Carothers
Declarant

Brooke C. Carothers
Signature

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10551281.doc

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Candace Cooper v. Controller of the State of California, et al.**
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I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 10, 2010, I served the attached **NOTICE OF ENTRY OF JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Elwood Lui
Jones Day
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071-2300
Telephone: (213) 489-3939
E-Mail: elui@jonesday.com
Attorney for Plaintiff

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 10, 2010, at Sacramento, California.

Brooke C. Carothers
Declarant

Brooke C. Carothers
Signature

SA2009103156
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EXHIBIT 3

Court of Appeal, Second Appellate District, Division Two - No. B230208

S200215

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JUSTICE CANDACE COOPER (RET.), Plaintiff and Appellant,

v.

CONTROLLER OF THE STATE OF CALIFORNIA, Defendant and Respondent.

The petition for review is denied.

SUPREME COURT
FILED

MAR 28 2012

Frederick K. Ohlrich Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

EXHIBIT 4

S211371

SUPREME COURT
FILED

JUN 13 2013

Frank A. McGuire Clerk

Deputy

2nd Appellate Civil Case No. B232801

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

ASAP COPY AND PRINT, ALI TAZHIBI dba ASAP COPY AND PRINT et al.,
Plaintiffs, Cross-Defendants, Cross-Complainants, and Appellants,

v.

CANON BUSINESS SOLUTIONS, INC., CANON FINANCIAL SERVICES, INC.,
Defendant, Cross-defendants, and Respondents,

GENERAL ELECTRIC CAPITAL CORPORATION,
Defendant, Cross-complainant, and Respondents,

HEMAR, ROUSSO & HEALD, LLP,
Cross-Defendant and Respondent.

After May 1, 2013 Decision of
Division Two Of The Court Of Appeal Second Appellate District

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR REVIEW
Or In The Alternative,
FOR GRANT AND TRANSFER ORDER

NINA RINGGOLD, Esq. (SBN 133735)
Law Offices of Nina R. Ringgold
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409, Fax: (866) 340-4312
Attorney for Petitioners

NOTICE IS HEREBY GIVEN that Petitioners request judicial notice pursuant to California Evidence Code § 451-453, and Evidence Code § 459 of the items specified below.

The documents are relevant to the petition for review. See Mangini v. R. J. Reynolds Tobacco Co. (1994) 7 Cal.4th 1057, 1063 overruled on another point in In re Tobacco Cases II (2007) 41 Cal.4th 1257, Mozetti v. City of Brisbane (1977) 68 Cal.App.3rd 565, 578.

1. **Filed: January 31, 2011. Cancelled: March 17, 2011** (After assignment to Division Eight of the California Court of Appeal Second Appellate District). Face Page of Petition for Writ of Mandate, Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities (Confidential Submission Under Seal, California Rule of Court, Rule 1.100 (g)(2)). (*Ringgold v. Superior Court (ASAP Copy and Print)* Cal. Court of Appeal 2nd Dist, Case No. B230553).

2. **Filed: January 31, 2011. Cancelled: March 17, 2011** (After assignment to Division Eight of the California Court of Appeal Second Appellate District). Face Page of Exhibits to Petition for Writ of Mandate, Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities (Confidential Submission Under Seal, California Rule of Court, Rule 1.100 (g)(2)). (*Ringgold v. Superior Court (ASAP*

Copy and Print) Cal. Court of Appeal 2nd Dist, Case No. B230553).

3. **Filed: March 17, 2011.** Clerk's Notice Returning the Cancelled Original Filing of the Petition and Exhibits to Petition for Writ of Mandate, Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities; and Application for fee Waiver (*Ringgold v. Superior Court (ASAP Copy and Print)* Cal. Court of Appeal 2nd Dist, Case No. B230553).

4. **Dated: April 1, 2011.** Notification from Clerk of the Supreme Court that petitioners' "application for an order allowing items of the record from the proceedings in the Court of Appeal to be submitted under seal" had to be sent to the Supreme Court by the Court of Appeal. [Face page of items returned] (*Ringgold v. Superior Court (ASAP Copy and Print)* Cal. Supreme Court, Case No. S191797)

5. **Dated: April 11, 2011.** Correspondence from petitioners to Administrative Justice of California Court of Appeal Second Appellate District and Deputy Clerk (1) returning original filing to the Court of Appeal pursuant to instruction of the Clerk of the Supreme Court and (2) requesting that the items be forwarded to the Supreme Court. (*Ringgold v. Superior Court (ASAP Copy and Print)* Cal. Court of Appeal 2nd Dist, Case No. B230553).

6. **Filed: April 13, 2011.** Order denying petition for review on April 13, 2011 in *Ringgold v. Superior Court (ASAP Copy and Print)* Cal. Supreme Court, Case No. S191797 with Justice Kennard of the opinion that the petition should be granted.

7. **Dated: June 9, 2013.** Docket (Register of Actions) during the period March 29, 2011 to April 19, 2011. Docket indicating that the cancelled original filing of the Petition and Exhibits to Petition for Writ of Mandate, Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities were received by the Supreme Court from the Court of Appeal on April 13, 2013 (the date that the petition for review and application for stay was denied). (*Ringgold v. Superior Court (ASAP Copy and Print)* Cal. Supreme Court, Case No. S191797)

Date: June 10, 2013

Respectfully Submitted

By: Nina Ringgold

Nina Ringgold, Esq.
Attorney for Petitioners

EXHIBIT 1

JAN 31 2014 B230558

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ORIGINAL

NINA RINGGOLD, in Capacity as Counsel of Record for ASAP Copy and Print, Ali Tazhibi dba ASAP Copy and Print	) 2nd Civ. No.) X-ref B225702, 08 B224215 08)
Petitioner,	) LASC No. PC043358)
LOS ANGELES SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES	) STAY REQUESTED) (Judge Barbara Scheper, LASC-North Valley District, Dept F49
Respondent	) Tel: 818.576.8403)) By February 28, 2014
ASAP COPY AND PRINT ALI TAZHIBI dba ASAP COPY AND PRINT	))
Real Parties In Interest.	))

FILED
Court of Appeal - SECOND DIST.
JAN 31 2014
Deputy Clerk

ASSIGNED TO DIVISION EIGHT

CONFIDENTIAL SUBMISSION UNDER SEAL
CALIFORNIA RULE OF COURT, RULE 1.100(c)(2)

PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES
[SUPPORTING EXHIBITS UNDER SEPARATE COVER]

On Petition From Orders of the Superior Court of the State of California, County of Los Angeles, The Honorable Barbara J. Scheper

NINA RINGGOLD, Esq. (SBN 133735)
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409
Attorney for Petitioner

Assigned to DIVISION EIGHT

EXHIBIT

2

ORIGINAL

B230553

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NINA RINGGOLD, in Capacity as Counsel of Record for ASAP Copy and Print; Ali Tazhbi dba ASAP Copy and Print

Petitioner,

LOS ANGELES SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES

Respondent

ASAP COPY AND PRINT, ALI TAZHBI dba ASAP COPY AND PRINT

Real Parties In Interest.

2nd Civ. No.

LASC No. PC043358

STAY REQUESTED

(Judge Barbara Scheper, LASC North Valley District, Dept F49 Tel: 818.576.8403)

By February 28, 2011

FILED

CONFIDENTIAL SUBMISSION UNDER SEAL
CALIFORNIA RULE OF COURT RULE 1.100.(g)(2)

EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF

On Petition From Orders of the Superior Court of the State of California County of Los Angeles, The Honorable Barbara J. Scheper

NINA RINGGOLD, Esq. (SBN 133735)
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409
Attorney for Petitioner

000094

EXHIBIT

3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 8 March 17, 2011

NINA RINGGOLD,
Petitioner,
v.
SUPERIOR COURT OF LOS ANGELES COUNTY et al.,
Respondents;
ASAP COPY AND PRINT,
Real Party in Interest.
B230553
Los Angeles County No. PC043358

Dear Petitioner:

I am returning your application to waive the filing fee for petition for writ of mandate, the writ of mandate, and the exhibits thereto. Filing of these documents vacated by order of the court on March 16, 2011.

Very truly yours,

Joseph A. Lane, Clerk

by B. Fisher,
Deputy Clerk

cc: Andrew K. Alper
Nina Rae Ringgold
Kevin M. McCormick
Hon. Barbara Scheper
John Philip Cleveland
Kent Jeffrey Schmidt
Pamela Lorraine Cox
File

Second Appellate District, Div. Eight
300 South Spring Street
Los Angeles, CA 90113
(213) 830-7000
www.courtinfo.ca.gov/2dca

Priority Mail
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361

CLERK'S OFFICE
Court of Appeal
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
SECOND FLOOR
300 SOUTH SPRING ST.
LOS ANGELES, CA 90015

Nina Rae Ringgold
9420 Reseda Blvd., # 361
Northridge, CA 91324

EXHIBIT

4

CORRIEN A. KISSINGER
ASSISTANT CLERK ADMINISTRATOR
JORGE NAVARRETE
ASSISTANT CLERK ADMINISTRATOR
MARY JAMESON
AUTOMATIC APPEALS SUPERVISOR

350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

Supreme Court of California

FREDERICK K. OHLRICH
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

April 1, 2011

Nina R. Ringgold
9420 Reseda Boulevard, #361
Northridge, CA 91324

Re: S191797 - RINGGOLD v. S.C. (ASAP COPY AND PRINT)

Dear Nina Ringgold:

No action may be taken on your "Application for order allowing items of the record to be submitted under seal," received March 29, 2011. There is no provision in the California Rules of Court that allows these exhibits to be submitted. The Supreme Court will receive the record directly from the Court of Appeal.

Very truly yours,

FREDERICK K. OHLRICH
Court Administrator and
Clerk of the Supreme Court

By: N. Benavidez, Deputy Clerk

Enclosure

Supreme Court Case No. S191797
2nd Civil Case No. B230553

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

NINA RINGGOLD,
Petitioner,
v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent,

ASAP COPY AND PRINT, et al.,
Real Parties in Interest.

After Order dated March 16, 2011 of Justice Roger Boren Acting in the Capacity as Administrative Presiding Justice of the Court Of Appeal, Second Appellate District

---

APPLICATION FOR AN ORDER ALLOWING ITEMS OF THE RECORD FROM THE PROCEEDINGS IN THE COURT OF APPEAL CONSISTING OF A PETITION FOR WRIT OF MANDATE AND SUPPORTING EXHIBITS TO BE SUBMITTED UNDER SEAL PURSUANT TO CALIFORNIA RULES OF COURT RULE 1.100 (c)(4) AND RULE 1.100 (g); DECLARATION OF NINA RINGGOLD IN SUPPORT OF APPLICATION

Nina R. Ringgold, Esq. (SBN 133735)
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409, Fax: (866) 340-4312
Attorney for Petitioner NINA RINGGOLD and ASAP COPY AND PRINT AND ALI TAZHIBI

S19[illegible]

Supreme Court Case No. _____
2nd Civil Case No. B230553

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

NINA RINGGOLD,
Petitioner,
v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent,

ASAP COPY AND PRINT, et al.,
Real Parties in Interest.

After Order dated March 16, 2011 of Justice Roger Boren Acting In the Capacity as Administrative Presiding Justice of the Court Of Appeal, Second Appellate District

---

~~APPLICATION FOR AN ORDER ALLOWING ITEMS OF THE RECORD FROM THE PROCEEDINGS IN THE COURT OF APPEAL CONSISTING OF A PETITION FOR WRIT OF MANDATE AND SUPPORTING EXHIBITS TO BE SUBMITTED UNDER SEAL PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.160(b)(4) AND FOR THE DECLARATION OF NINA RINGGOLD IN SUPPORT OF APPLICATION~~

Nina R. Ringgold, Esq. (SBN 133735)
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409, Fax: (866) 340-4312
Attorney for Petitioner NINA RINGGOLD and ASAP COPY AND PRINT AND ALI TAZHIBI

$05.96
MAILED FROM ZIPCODE 94102

Supreme Court of California
350 McAllister St.
San Francisco, CA 94102

Nina R. Ringgold
9420 Reseda Boulevard, #361
Northridge, CA 91324

EXHIBIT

5

Law Office of Nina Ringgold

9420 Reseda Blvd # 361
Northridge, CA 91324
(818) 773-2409 Telephone
(866) 340-4312 Facsimile

April 11, 2011

Justice Roger Boren
Administrative Justice of the
California Court of Appeal
Second Appellate District
Or,
Danny Potter
Chief Assistant

California Court of Appeal
Second Appellate District
300 South Spring Street
Los Angeles, CA 90013

Re: Nina Ringgold v. County of Los Angeles, ASAP Copy and Print et al. (California Supreme Court Case No. S191797, Court of Appeal No. B230553) – Request for Transfer of Record to the California Supreme Court

Dear Justice Boren or Mr. Potter:

I spoke with the Mr. Jorge Navarrete regarding the record in this matter and he suggested that I return the items which the Court of Appeal returned to me so that a complete record can be forwarded to the California Supreme Court.

As you may recall, prior to issuance of the remittitur in this proceeding you returned both the petition for writ of mandate and the supporting exhibits for the above-referenced case to my office. During the proceedings in the Court of Appeal I had filed a response on February 24, 2011 based on a February 10, 2011 notice I received from the Court of Appeal. The February 24, 2011 response extensively refers to the verified petition and supporting exhibits.

After receiving Justice Boren's March 16, 2011 order and a return of the verified petition and supporting exhibits, I contacted the court asked why this portion of the record was being returned to me since I intended to seek review of the order. I explained that my response cited to and referred to the verified petition and supporting exhibits. (See citations at page 2, 3 and the actual requests for accommodation for disability, and orders). I also explained that there was no indication in the March 16, 2011 order that my complete February 24, 2011 response was not being considered by the court.

Upon filing the petition for review, the Supreme Court requested the record from the Court of Appeal. I am returning the items which the Court of Appeal returned to me so that these items can be properly forwarded to the California Supreme Court.

Sincerely,

COPY

Nina Ringgold, Esq.

Cc: Mr. Ali Tazhibi, ASAP Copy and Print, Clients
Mr. Jorge Navarrete, Asst. Clerk Administrator
Cal. Supreme Court

EXHIBIT

6

Court of Appeal, Second Appellate District, Division Eight - No. B230553

S191797

IN THE SUPREME COURT OF CALIFORNIA

En Banc

NINA RINGGOLD, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;

ASAP COPY AND PRINT, et al., Real Parties in Interest.

The request for judicial notice is denied.
The application for stay and petition for review are denied.

Kennard, J., is of the opinion the petition should be granted.

APR 13 2011

CANTIL-SAKAUYE

Chief Justice

EXHIBIT

7

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

Change court

Court data last updated: 06/09/2013 10:05 PM

Docket (Register of Actions)

RINGGOLD v. S.C. (ASAP COPY & PRINT)
Case Number S191797

Date	Description	Notes
03/29/2011	Petition for review filed	Petitioner: Nina Ringgold Attorney: Nina Rae Ringgold Real Party in Interest: ASAP Copy & Print Attorney: Nina Rae Ringgold CRC 8.25 (b)
03/29/2011	Stay application filed (separate petition pending)	
03/29/2011	Record requested	
03/29/2011	Request for judicial notice received (pre-grant)	
03/29/2011	Forma pauperis application filed	
03/30/2011	Received Court of Appeal record	one doghouse
04/13/2011	Received additional record	One jacket (Confidential)
04/13/2011	Petition for review & application for stay denied	The request for judicial notice is denied. Kennard, J., is of the opinion the petition should be granted.
04/19/2011	Returned record	1 doghouse, 1 sealed envelope

Click here to request automatic e-mail notifications about this case.

PROOF OF SERVICE

I hereby declare and state:

I am over the age of eighteen years, employed in the City of Los Angeles, County of Los Angeles, California, and not a party to the within action.

On June 10, 2013 I served a true and correct copy of the following:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR REVIEW
Or In The Alternative,
FOR GRANT AND TRANSFER ORDER

On the persons or entities indicated below deposit in the United States Mail

Pamela Cox, Esq.
Hemar, Rousso & Heald, LLP
15910 Ventura Blvd., 12th Floor
Encino, CA 91436
Attorney for General Electric Capital Corporation and
Hemar, Rousso & Heald, LLP

Andrew Alper, Esq.
Frandzel Robins Bloom & Csato, L.C.
6500 Wilshire Blvd., 17th Floor
Los Angeles, CA 90048-4920
Attorneys for Canon Financial Services, Inc.

EXHIBIT 5

DIF

M. O.

REC'D
APR 22 2013
FILING WINDOW

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
JUL 31 2013
John A. Clarke, Executive Officer/Clerk
By _____ Deputy
STEVE SMYTHE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT - STANLEY MOSK COURTHOUSE

BY FAX

ARTHUR GILBERT, Plaintiff, v. **CONTROLLER OF THE STATE OF CALIFORNIA,** Defendant.	Case No. BC 487949 **[~~PROPOSED~~] JUDGMENT** Date: April 26, 2013 Time: 1:30 p.m. Dept: 15 Judge: Hon. Richard Fruin Trial Date: April 26, 2013 Action Filed: July 10, 2012

This matter came before the Court on April 26, 2013, at 1:30 p.m., for a nonjury trial.

Elwood Lui and Erica Reilley of Jones Day appeared on behalf of Plaintiff Arthur Gilbert. Anthony R. Hakl, Deputy Attorney General, appeared on behalf of Defendant Controller of the State of California.

Having considered the written materials submitted by the parties, and after considering all of the evidence and hearing oral argument, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Judgment is entered in favor of Defendant Controller of the State of California;

2. Judgment of dismissal is entered against Plaintiff Arthur Gilbert; and

3. Defendant Controller of the State of California shall recover costs in the amount of _____ pursuant to Government Code section 6103.5.

Dated: July 31, 2013

Richard Fruin
THE HONORABLE RICHARD FRUIN
Judge of the Superior Court

Dated: April 22, 2013

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
PETER K. SOUTHWORTH
Supervising Deputy Attorney General

ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Respondent California Secretary of State Debra Bowen

Approved as to form:

Dated: _____

_____
ELWOOD LUI
ERICA REILLEY
Jones Day
Attorneys for Plaintiff Arthur Gilbert

SA2012107183
11075977.doc

EXHIBIT 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/31/13			DEPT. 15
HONORABLE Richard Fruin	JUDGE	S. SMYTHE	DEPUTY CLERK
HONORABLE 12	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

BC487949

ARTHUR GILBERT
VS.
CONTROLLER OF THE STATE OF CALIFORNIA

Plaintiff Counsel

[NO APPEARANCES]

Defendant Counsel

NATURE OF PROCEEDINGS:

NOTICE OF ENTRY OF JUDGMENT

Counsel/parties are hereby advised that judgment in this matter has been entered this date.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and judgment dated 7-31-13 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7-31-13

John A. Clarke, Executive Officer/Clerk

By: S. Smythe, Deputy

Jones Day

MINUTES ENTERED
07/31/13
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/31/13			**DEPT.** 15
HONORABLE Richard Fruin	JUDGE	S. SMYTHE	DEPUTY CLERK
HONORABLE 12	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

BC487949

ARTHUR GILBERT
VS.
CONTROLLER OF THE STATE OF CALIFORNIA

Plaintiff Counsel

[NO APPEARANCES]

Defendant Counsel

NATURE OF PROCEEDINGS:

Attn.: Elwood Lui, Esq.,
and Erica L. Reilley, Esq.
555 S. Flower St
50th Floor
Los Angeles, Calif. 90071-2300

Office of the Attorney General
California Department of Justice
Attn.: Anthony R. Hakl, Esq.
1300 I Street, #125
P.O. Box 944255
Sacramento, Calif. 94244-2550

MINUTES ENTERED
07/31/13
COUNTY CLERK

EXHIBIT 7

D-15

STATEMENT OF TENTATIVE DECISION

ARTHUR GILBERT v. CONTROLLER OF THE STATE OF CALIFORNIA, BC 487949

Plaintiff Arthur Gilbert, a justice of the California Courts of Appeal, seeks a judicial declaration that Article VI, Section 17 of the California Constitution does not render him ineligible to accept other public employment should he choose to resign his office before the end of the term for which he was elected.

The term of office for justices of our Courts of Appeal is 12 years. California Constitution, Article VI, Section 16. Justice Gilbert was retained in office in a retention election held in November, 2006. He commenced his present term in January, 2007, and that term ends in January, 2019.

The issue requires constitutional interpretation. The California Constitution, Article VI, Section 17 provides:

> A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office....

The defendant is the Controller of the State of California. The Controller is charged with processing payroll and benefits payments, including retirement benefits, to State employees, including active and retired judicial officers. The Controller asserts that Justice Gilbert is ineligible to accept other public employment even if he resigns his judicial office before the end of his present term.

Justice Gilbert's verified complaint pleads two causes of action for declaratory relief. The first cause of action seeks a judicial declaration that the ineligibility provision of Article VI, Section 17 applies only to justices who have not retired or resigned from the Court of Appeal, that is, the ineligibility provision applies only to sitting justices. The second cause of action seeks a judicial declaration that, to the extent that Article VI, Section 17 is read to bar justices who have retired or resigned from other public employment during the remainder of the terms to which they have been elected, the provision violates the guaranties of equal protection provided in the California Constitution, Article I, Section 7 and the 14th Amendment of the U.S. Constitution.

The matter was tried to the court. Justice Gilbert was represented by Elwood Lui, Erica L. Reilley and Peter H. David of JONES DAY. Defendant Controller was represented by Deputy Attorney General Anthony R. Hakl.

The evidence offered at trial consisted primarily of documents that were received, pursuant to stipulation, through declarations and requests for judicial notice. Justice Gilbert and Superior Court Judge Kevin Murphy (Ret.) testified as witnesses.

Justice Gilbert testified that he has a present intent to resign as a justice of the Court of Appeals within the next several years, but only provided that Article VI, Section 17 is judicially interpreted in a manner that does not render him ineligible to accept other public employment. He testified that, were he eligible to do so, he would seek other public employment, should he resign from the Court of Appeal.

The Controller presented evidence in the form of interrogatory responses verified by the Controller's Office. The Controller, through the discovery responses, testified that should Justice Gilbert resign from the Court of Appeal he would be ineligible to accept public employment (apart from teaching positions in public institutions) during the remainder of his term in office under Article VI, Section 17 of the California Constitution. (See, Hakl declaration, Exhs. 3 and 4.)

CONSTITUTIONAL PROVISION:

Article VI, Section 17 of the California Constitution, in its current version, is quoted below. The court has bolded the provisions that relate to the eligibility of a judge or justice to accept other public employment within the term for which he or she was elected.

> A judge of a court of record may not practice law **and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office,** except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and does not interfere with the regular performance of his or her judicial duties while holding office. **A judge of a trial court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.** [] A judicial officer may not receive fines or fees for his own use.

THE CONTROVERSY IS JUSTICIABLE AT THIS TIME:

Justice Gilbert challenges any interpretation of Article VI, Section 17 that would render him ineligible for public employment until January, 2019 should he resign from the Court of Appeal before his term ends.

The Controller disputes Justice Gilbert's standing to bring this action because he has not, at this time, resigned or retired from the Court of Appeal and, further, that Justice Gilbert has not applied for a non-judicial position in state government. See, Controller's Answer, 1st and 2nd Aff. Defenses. The Controller argues that this case does not present an "actual controversy," that is, it is not justiciable.

Code of Civil Procedure section 1060 requires an "actual controversy relating to the legal rights and duties of the respective parties." Under companion CCP section 1061 a court may refuse to allow an action for declaratory relief "where its declaration or determination is not necessary or proper at the time under all the circumstances."

"'The concept of justiciability involves the intertwined criteria of ripeness and standing. A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.'" *Stonehouse Homes LLC* v. *City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 (internal citations omitted). Ripeness is evaluated by a two-prong test: "'(1) whether the dispute is sufficiently concrete that declaratory relief is appropriate; and (2) whether withholding judicial consideration will result in the parties suffering hardship.'" *Ibid.*

This case raises important policy issues. The California Constitution, in the Controller's view, renders Justice Gilbert ineligible for other public employment, apart from teaching positions, until January, 2019 should he retire from his Court. The language of *Lungren v. Davis* (1991) 234 Cal.App.3d 806, 830 supports Justice Gilbert's standing to seek declaratory relief. The *Lungren* court said:

> Disqualification from public office is a significant civil disability. (citation omitted.) The right to hold pubic office is considered fundamental under the state and federal Constitutions. (citations omitted.) Accordingly, "[t]he exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office." (citation omitted.)

The issue in dispute satisfies the "sufficiently concrete" criteria. Justice Gilbert is the Presiding Justice of Division 6, Second District of the California Court of Appeal. He

is widely known and celebrated in the legal and political circles not only as a jurist of 37 years standing but also as a newspaper columnist and frequent speaker to bar audiences. He has identified four policy-making positions in state government for which he is qualified, and he has spoken with the Governor's Office about his interest in applying for those positions should he retire. Justice Gilbert testified that he likely would retire within two years and then seek other public employment were he eligible to accept appointment to a position in state government. However, in his view, the uncertainty as to whether Article VI, Section 17 renders him ineligible to accept an appointive position in state government, at least before 2019, prevents him from acting on his plan to retire from the Court of Appeal.

A "present controversy" exists because the Controller's position--that an appellate justice, even if retired, is ineligible for other public employment during his or her term, except as permitted in Article VI, Section 17--is long standing, see 66 Ops. Cal. Atty Gen.440 (1983) and 67 Ops. Cal. Atty. Gen 149 (1984), and has been recently litigated. Justice Candace Cooper (Ret.) brought suit against the Controller in 2009 seeking a declaration that Article VI, Section 17 did not bar her, after she retired in 2008, from accepting public employment, and specifically from teaching at a public university, during the remainder of the term to which she had been elected. The Controller, represented by the Attorney General, defended against Justice Cooper's action, but in opposing summary judgment the Controller stipulated that he would not oppose a judicial declaration that Justice Cooper, having retired from the Court of Appeal, may accept part-time or full-time teaching positions in public institutions. Justice Cooper's appeal from the order granting her only partial relief was dismissed.[1]

The "imminent hardship" test embraces the notion that legal disputes creating uncertainty and, therefore, the likelihood of repeated litigation should be addressed and resolved expeditiously. Justice Gilbert submitted into evidence newspaper articles demonstrating that the plans of trial judges and justices to apply for public employment were frustrated by the uncertainty of whether Article VI, Section 17 would allow them, after resigning from the bench, to accept other public employment. (Liu decl., Exhs. 3

---

[1] The letter briefs that the parties submitted to respond to the justiciability issue raised by the Court of Appeal in the Justice Cooper litigation are Exhibits 3 and 4 to the Liu declaration. Copies of the pleadings from that litigation--the complaint, the trial court's 27-page decision and order granting limited relief, and the appellate order dismissing the appeal--are attached to the Controller's demurrer as Exhibits A, B and D. The certified reporter's transcript for the September 9, 2010 hearing (before the Honorable Charles H. Palmer) that granted Justice Cooper limited relief is attached to the Lui declaration as Exh. 1. The court takes judicial notice of and has read these pleadings.

and 17.) Judge Murphy (Ret.) testified that he was unable to accept the top deputy position with Santa Clara County's newly elected District Attorney due to uncertainty as to whether doing so in the middle of his term was "illegal" under Article VI, Section 17. Judge Peter Espinoza testified (in a declaration filed in opposition to the Controller's demurrer) that his application for appointment as the Public Defender for Los Angeles County was "blocked" by the uncertainty of whether he could resign his judicial office to accept that position in light of Article VI, Section 17. (Liu decl., Exh. 25.)

If there is a possibility that Article VI, Section 17 is misread by the Controller--that the provision does not bar California justices and trial judges from accepting other public office during the remainder of their elected term after they retire or resign--Justice Gilbert's complaint raises a justiciable controversy that is ripe for judicial resolution. This court finds that Justice Gilbert is entitled to a judicial declaration as to whether Article VI, Section 17 renders him ineligible to take non-judicial public employment during the remainder of his term should he resign before the end of the term for which he was elected.

HISTORY OF THE INELIGIBILITY PROVISION IN ARTICLE VI, SECTION 17:

From the Gold Rush days, the State Constitution has provided that justices and judges are ineligible for other public office during the term for which they are elected--albeit with a notable 36 year exemption for trial judges between 1930 and 1966. Over the course of 165 years changes were made in the ineligibility provision, but its core language has remained remarkably constant. The 1849 Constitution provided:

> Sec. 16. The Justices of the Supreme Court and District Judges shall be ineligible to any other office during the term for which they shall have been elected.

California adopted a new Constitution by a Constitutional Convention that met in 1878 and 1879. The provision from the 1849 Constitution was reiterated and elaborated in the 1879 Constitution, as follows:

> Sec.18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

There are no drafters' notes to shed light on the meaning of the phrase "shall be ineligible," quoting from the 1849 Constitution, "for other office during the term for

which they are elected." However, the Supreme Court , in the early case of *People v. Burbank* (1859) 12 Cal.378, 392, in discussing the length of a judicial term, said: "If A is elected District Judge and enters upon the office, or accepts it for a day, he is disqualified for other office during the whole period of six years." Although the statement is characterized as dictum, "it demonstrates the understanding that it is the assumption of a term of office which is the critical criterion for accrual of the benefits and detriments of the term of office." *Lungren v. Davis,* 234 Cal.App.3rd, *supra,* at 830.

The 1879 Constitution added a provision not found in the 1849 Constitution. The new provision is Section 22, reading:

> Sec. 22. No judge of a court of record shall practice law in any court of this state during his continuance in office.

Constitutional amendments in 1925 combined the provision prohibiting justices and judges from practicing law into the same sentence with the provision making judges and justices ineligible during the terms for which they were elected for non-judicial public employment. This amendment also brought municipal judges within the ineligibility provision. The 1925 constitutional amendment, renumbered as Section 18, provided:

> Sec. 18. The justices of the supreme court, and of the district courts of appeal, and the judges of the superior courts and of the municipal courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they have been elected or appointed, and no justice or judge of a court of record shall practice law in any court of the state during his continuance in office.

The electorate in 1930 voted a dramatic change to this constitutional scheme: it voted an amendment that allowed trial court judges to seek other public employment through appointment or election, with their acceptance of such position to constitute their resignation from judicial office. The amendment also strengthened the anti-moonlighting provision that had first appeared as Section 22 in the 1879 Constitution. The amended Section 18 read:

> Sec.18. The justices of the supreme court, and of the district courts of appeal and the judges of the superior courts and the municipal courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they have

> been elected or appointed, and no justice or judge of a court of record shall practice law in or out of any court during his continuance in office; *provided, however*, that a judge of the superior or municipal court shall be eligible to election or appointment to a public office during the time for which he may be elected, and the acceptance of any other office shall be deemed to be a resignation from the office held by the judge.

The voters did not extend to appellate justices the right allowed a trial judge to seek other "public office." The ballot argument[2] provides this explanation for allowing trial judges to accept other public positions:

> A clause of the Amendment also permits a judge to be elected or appointed to other public office by resigning his judicial position thus making available for wider public service to the people the best judicial minds in the state. (Deft. RJN, Exh. 11.)

The Legislature in 1963 created the Constitutional Revision Commission to recommend desirable constitutional changes. See, *Alex v. City of Los Angeles* (1973) 35 Cal.App.3d 994, 999, fn.1. Receiving the recommendations, the Legislature debated the proposals, modifying some of them, and in 1966 placed before the voters the proposed constitutional provisions. The electorate, in passing the proposed changes to Article VI, repealed the right of trial judges to accept an appointment to other public employment "during the term for which he was selected" but left intact the right of trial judges to seek elective public office (upon taking a leave of absence from the bench without pay). The 1966 amendment also substituted the word "selected" to apply to judges either elected or appointed for a term. *Lungren v. Davis*, 234 Cal.App.3rd, *supra*, at 822. The constitutional provision, as passed in 1966 and renumbered as Section 17, then read:

> Sec. 17. A judge of a court of record may not practice law and during the term for which he was selected is ineligible for public employment or public office other than judicial employment or judicial office. A judge of the superior or municipal court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

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[2] Ballot summary, arguments and analysis may be used to determine the meaning of an amendment adopted by the voters. *Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 245-246.

The staff notes from the Constitutional Revision Commission explain the thinking of the drafters of the provision that removed the provision that allowed trial judges to accept an appointment to other public positions upon their resignation from the court.[3] The staff notes advise as follows:

> The provision that judges of municipal or superior courts are eligible for election or appointment is deleted because [it is] detrimental to the administration of justice; the possibility of an appointment in return for a decision is thereby eliminated. However, a judge who resigns is made eligible for elective office. (Deft. RJN, Exhs. 16-20.)

The above quoted staff note was incorporated verbatim in the Report of the Constitutional Revision Commission to the Legislature as the reason for restoring the ineligibility provision to trial court judges. (Deft. RJN, Exh. 21.) The Report said:

> In Section 18 the provision that judges of municipal and superior courts are eligible for election or appointment is deleted because [it is] detrimental to the administration of justice; the possibility of an appointment in return for a decision is thereby eliminated. However, a judge who resigns is made eligible for elective office.

The electorate adopted Section 17, with its present language, in 1988 (Proposition 94). That amendment permitted judges of courts of record to accept part-time teaching positions that were outside the normal court hours and that did not interfere with the regular performance of their judicial duties. The ballot statement submitted to the voters over the names of the president of the California Judges Association, the president of the State Bar and a member of the Assembly informed the public about the period during which a justice or judge cannot accept public employment as follows:

> The prohibition applies during the time the judge is actually in office and during the entire term for which the judge was selected, even if the judge has resigned part way through the term. (Deft. RJN, Exh. 24.)

This historical review is the foundation for the court's analysis in the following

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[3]Successive drafts of a pending bill may be considered to determine the meaning of a provision that is argued to be unclear. *Carter v. California Dept. of Veteran's Affairs* (2006) 38 Cal.4th 914, 927-928.

section. The successive iterations of the constitutional provisions now embodied in Article VI, Section 17 has shown that the ineligibility provision applying to judges of a court of record is not a relic of the Gold Rush era. The ineligibility provision in Article VI, Section 17 that is disputed was re-adopted by the people in 1966 after being studied by the Constitutional Revision Commission and placed by the Legislature on the ballot. The passage of the 1966 amendment to Article VI, Section 17 repealed an earlier constitutional amendment, popularly adopted 36 years before, that had allowed trial judges, though not appellate justices, to resign their judicial office mid-term to accept appointment to other public office. A constitutional provision that has included the prohibition barring justices of the Court of Appeal from accepting other public office during their elected term has been submitted to the voters five times in the last century (1904, 1924, 1930, 1966 and 1988) and been approved.

ARTICLE VI, SECTION 17 REVEALS A PURPOSE TO IMPOSE RESTRICTIONS THAT APPLY DURING A JUSTICE'S ELECTED TERM:

The parties dispute the interpretation of the ineligibility provision, specifically whether its application is limited to sitting judges. Their dispute turns on the meaning of the word "term" in the clause reading: "A judge of a court of record ... during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office...."

Justice Gilbert argues that the "term" to which he was elected would end were he to retire or resign during the term to which he was elected. This interpretation would limit the reach of Section 17 to active judges or justices. The Controller's position is that a "term" for a justice is a period of time fixed by law that is unaffected by the occupant's decision to leave the office. A retired justice, under the Controller's interpretation, would remain subject to the limitations imposed by Section 17 for the period of time fixed by statute for the term.

The parties have offered plain text analysis, legislative history, case law and public policy to argue their views as to the meaning of the word "term" as used in Section 17.

This court concludes, for the reasons explained below, that the ineligibility provision applies to active and retired judges and justices alike and applies throughout the time period prescribed for the office to which they were elected once they assume that elected office. The court, accordingly, will grant judgment for defendant Controller on plaintiff's first cause of action.

1. An Elected Justice Is Elected to a Fixed Term of 12 Years. Resignation during that Term does not End the Term.

Article VI, Section 16(a) fixes the term of office for justices of the Supreme Court and the Courts of Appeal as 12 years. The entire provision reads:

> SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

This court in interpreting "term" as used in Section 17 may look at its usage in Section 16. The *Lungren* court approved this approach: "There can be no question then that words and phrases within Article VI of the Constitution must be interpreted in the light of other provisions of that article [citations omitted] ... [T]here is nothing in the history of these two sections [Sections 16 and 17] which indicates or even suggests that the word 'term' was meant to have one meaning in section 16 and another in 17." The *Lungren* court concluded "that the word 'term' as used in section 17 is defined in section 16." *Lungren v. Davis*, 234 Cal.App.3d, *supra*, at 822-823.

The exception clause in Section 16 ("except that a judge elected to an unexpired term serves the remainder of the term") on its face contemplates that when a justice elected to a term ceases to hold that position, the successor justice will be selected to an *unexpired term* and serves *the remainder of the term*. If a term ended when an occupant left office before 12 years, there would be neither an *unexpired term* nor *the remainder of the term*.

This court concludes from "plain text" analysis is that "term" as used in Section 17 when applied to an appellate justice who was elected to a 12-year term renders the justice ineligible for non-judicial public employment of public office for the entire 12-year period whether or not the justice resigns or retires before the end of the 12-year term. The resignation or retirement of a justice would cause an "unexpired term," but it would not end that term.

The last sentence from Section 16 (quoted above) suggests a reason for the fixed term provision for appellate justices. The Constitution prescribes staggered terms for the

justices in newly created districts and divisions. (The terms for justices sitting in existing districts and divisions in the Courts of Appeal are staggered in the same manner.) The organization is different in the trial courts, where the term of a Superior Court judge begins when a person is elected and assumes office. In the trial courts a person appointed by the governor to a trial court holds office on a temporary basis, until the office is filled by an election. *Lungren v. Davis*, 234 Cal.App.3d, *supra*, at 820. A justice appointed to the Court of Appeal, quite differently, holds a position having a fixed term, such that a vacancy occurring during the term leaves an unexpired term to be filled by appointment.

2. The Clause "and during the term for which the judge was selected" Is Surplusage if Section 17 Is Limited to Sitting Justices and Judges.

In interpreting constitutional or statutory provisions, words and phrases relating to the same subject should be read together and any interpretation that would render any words or phrases surplusage is to be avoided. "In construing the words of a statute or constitutional provision to discern its purpose, the provisions should be read together, and an interpretation which would render terms surplusage should be avoided, and every word should be given some significance, leaving no part useless or devoid of meaning." *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54.

Article VI, Section 17 prescribes two prohibitions for elected judges and justices. Section 17 itself distinguishes between the prohibition tied to a justice's service in office and the prohibition tied to the term to which the justice was elected. The prohibition against the practice of law by its terms only applies to sitting judges and justices ("A judge of a court of record may not practice law"), but the other prohibition ("and during the term for which the judge was selected is ineligible for public employment...") is tied linguistically to the term of the office to which the judge or justice was elected. If the drafters intended the ineligibility provision to apply only to sitting justices, they needed only to have deleted the phrase "during the term for which the judge was selected," and then the operative language would have read "A judge of a court of record may not practice law and is ineligible for public employment or public office...."

Historically the constitutional prohibition against the practice of law by a judge was accompanied by the qualifier (until 1966) "during his continuance in office." The qualifier was removed when the Constitution was shortened and its language simplified through the efforts of the Constitutional Revision Commission. But the phrasing of the other prohibition--the ineligibility provision--was retained because a judge's or justice's ineligibility for other public office was prescribed to continue for the term of the office whether or not the occupant resigned from the office. A construction of Article VI, Section 17 that fails to measure the period of ineligibility as continuing "during the term

for which the judge was selected" renders the word "term" and the phrase surplusage. This "term for which the judge was selected" would no longer have any additive meaning. Such an interpretation violates the principles of constitutional interpretation.

3. The Two Prohibitions Applicable to Judges of Courts of Record Have Different Origins and Serve Different Purposes.

Justice Gilbert argues that the two prohibitions in Article VI, Section 17 ("A judge ... may not practice law and during the term for which the judge is selected is ineligible for public employment or public office...") have the same primary purpose. His counsel, in final argument, contended its primary purpose is "prohibiting concurrent dual judicial and non-judicial positions of active judges" and, elaborating further, said: "The primary purpose of Section 17 is to prevent competing pressures on a judge's time and impartiality that may arise from a dual-office situation. A dual-office situation [applies to] a sitting judge because a former judge doesn't have an office of judge." (Trial Trans., pp. 40 and 38.) This argument was advanced in greater detail in plaintiff's trial brief (at p. 14):

> Courts have identified two primary purposes behind Section 17, and neither are promoted by applying the provision to retired or resigned judges. First, Section 17 is designed to ensure that a second, non-judicial position does not unduly interfere with the judge's judicial duties....[] Second, Section 17 "serve[s] the purpose of promoting judicial independence and impartiality" by ensuring that a sitting judge's loyalties are not divided between his judicial duties and the duties of his other job." *Lungren, supra*, 234 Cal.App.3d at p. 825.

Defining the purposes served by Section 17 has significance. If its principal purpose is only to conserve judicial time, it may be argued in greater confidence that Section 17 applies to active jurists only and not to judges or justices who have retired or resigned. Ascribing the same purpose to these two prohibitions in Section 17, however, overlooks that the two clauses were originally in separate provisions in Article VI and have a different histories. Their different histories may suggest the provisions have complementary rather than identical purposes.

The provision that a judge of a court of record may not practice law was added in the 1879 Constitution.[4] The provision originally read:

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[4] The staff notes from the Constitutional Revision Commission (1964-1966) state in error: "This [1904] amendment also added a provision against the practice of law by judges of

> Sec. 22. No judge of a court of record shall practice law in any court of this state during his continuance in office.

As the provision applies only during a judge's *continuance in office*, it applies only to sitting judges. This is made clear by the 1930 amendments which expanded the law practice prohibition to provide "no justice or judge of a court of record shall practice law in or out of court during his continuance in office." The purpose of the amendment, the ballot statement told the electorate, was to promote the integrity of the court:

> That some honorable members of the judiciary are privately advising and serving clients in good faith and with no ulterior motive is known.... [] The passage of this Amendment will remove the temptation of private, undisclosed practice from our judges, and will also place them further above suspicion on the part of the people. As the integrity of our courts and the confidence of our people in the courts is one of the basic necessities of our government, the wisdom of this Amendment should be too apparent for further argument. [Deft. RJN, Exh. 11.]

Justice Gilbert attributes to this prohibition ("judges ... may not practice law") an anti-moonlighting purpose, quoting from *Abbott v. McNutt* (1933) 218 Cal.225, 229 ["'The policy is to conserve the time of judges for the performance of their work...'"]. Plt. Br. p.13. That purpose, however, is secondary in the legislative history of Section 17. It is not mentioned in the 1930 ballot statement at all. The purpose of preserving judicial time is mentioned in the 1964-1965 staff notes of the Constitutional Revision Commission as a secondary purpose. The staff notes said (see Plt. RJN, Exh. 17):

> This draft takes the view that it is inimical to an independent judiciary for judges to serve in other capacities. The community can have the benefits of a judge's special knowledge through other means such as his appearance at hearings or through the Conference of Judges but that service on boards and commissions is time consuming and presents possible conflicts of interest.

The 1925 amendment first joined the two prohibitions in the same constitutional provision. Section 22 from the 1879 was positioned as an add-on (showing its separate origin) to Article VI, Section 18 (now Section 17). The one sentence separately stating

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courts of record." (See, Deft.'s RJN, Exhs. 16, 17, 18, 19 and 20.) The provision that judges "of a court of record" shall not practice law originated 25 years earlier in the 1879 Constitution. See, on this point, *Lungren v. Davis*, 234 Cal.App.3rd, *supra*, at 812.

the two prohibitions read:

> Sec.18. The justices of the supreme court, and of the district courts of appeal and the judges of the superior courts and the municipal courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they have been elected or appointed, and no justice or judge of a court of record shall practice law in any court of the state during his continuance in office.

The prohibition against a judge practicing law was broadened in the 1930 amendment to bar a judge from practicing "law in or out of any court during his continuance in office." The 1930 amendment also made a significant change to the ineligibility provision in Section 17 by making trial judges "eligible to election or appointment to public office during the time for which he may be elected."

The 1966 amendment reordered the two restrictions in Section 17 by putting the prohibition against a judge practicing law first in the sentence and by removing from that prohibition the phrase *during his continuance in office.*

This history suggests the two prohibitions found within Section 17 target different audiences. The prohibition against a judge practicing law has always been limited, in accordance with its original language, to sitting judges ("during his continuance in office"); the prohibition against a judge accepting non-judicial public employment "during the term to which the judge is elected" has never been construed to apply only to sitting judges.

The scattered case law, although considering different issues, assumes the ineligibility provision attaches to judges or justices intending to resign or already retired from judicial office rather than to sitting judges. The *Lungren* court, for instance, proceeds on the premise that once a Superior Court judge assumes an elective judicial office he cannot resign and take another public office during the remainder of the term for which he was elected. *Lungren v. Davis*, 234 Cal.App.3d, *supra*, at 828.

4. The Legislature and the Voters Understood that a Change in the Ineligibility Provision Required a Constitutional Amendment.

The voters, in 1930, amended Article VI, Section 18 (now Section 17) to provide an exception to the ineligibility provision but only for trial judges. The amendment is quoted below in two parts, the second part creating the exception:

> Sec.18. The justices of the supreme court, and of the district courts of appeal and the judges of the superior courts and the municipal courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they have been elected or appointed, and no justice or judge of a court of record shall practice law in or out of any court during his continuance in office;
>
> *provided, however*, that a judge of the superior court or of a municipal court shall be eligible to election or appointment to a public office during the time for which he may be elected, and the acceptance of any other office shall be deemed to be a resignation from the office held by said judge.

The ballot statement offers this explanation for this exception to the ineligibility clause that had been part of the Constitution since the beginning of statehood:

> A clause of the Amendment also permits a judge to be elected or appointed to other public office by resigning his judicial position, thus making available for wider public service to the people the best judicial minds in the state. [Deft. RJN, Exh. 11.]

The context of the amendment makes clear that the drafters of the exception considered the phrase "during the *time* for which he may be elected" in the exception to refer to the phrase from the first part of the amendment "during the *term* for which they have been elected." Thus, after passage of the amendment there was no prohibition for trial judges from seeking and accepting public employment during the term for which the judge was elected.

It is persuasive that the Legislature in placing the amendment on the ballot believed that a constitutional amendment was required to authorize a trial judge to take other public employment during the term of the office to which the judge had been elected. The word "term" as used in the initial and operative provision of Section 17 ("The justices ... and the judges ... shall be ineligible for any other office ... during the term for which they have been elected") was otherwise understood to trigger the ineligibility provision during the judge's entire term whether he resigned or retired during the term. If a judge was free to retire or resign to avoid the ineligibility provision, the 1930 constitutional amendment would have been unnecessary.

The significance is that not only was an exception required for trial judges to avoid the ineligibility bar but appellate justices were not brought within the exception.

The court's conclusion is that the 1930 constitutional amendment, although later repealed, is compelling evidence that the original and now restored language from Article VI, Section 17 denies the right to judges and justices to accept other public employment during the entirety of the term for which they have been elected (except that trial judges may seek elective office after first taking a leave of absence without pay from their judicial office).

A partial repeal of the 1930 amendment--so that judges of a court or record could not accept appointive public office during the term for which they were elected--required the passage by the voters of a superseding amendment to the state constitution. The Constitutional Revision Commission, in 1966, recommended the repeal of the 1930 amendment to the Legislature because allowing for the election or appointment of a trial court judge "[is] detrimental to the administration of justice; the possibility of an appointment in return for a decision is thereby eliminated." The Legislature, in placing the constitutional revision on the ballot, presumably accepted the Commission's rationale but modified the Commission's recommendation by permitting trial judges the right to campaign for elective office during their judicial term upon taking a leave from their judicial office without pay.

5. The Ineligibility Provision Serves the "Purpose of Promoting Judicial Independence and Impartiality."

This opinion has focused on the original language of the ineligibility provision as expressed through a succession of constitutional amendments to today's version contained in Article VI, Section 17. The language itself establishes that the word "term" as used in the phrase "and during the term for which the judge was selected" means the period of time fixed in Article VI, Section 16 for the elected period for judicial offices. This court's conclusion, after looking at the text and the history of this constitutional provision, is that for the duration of the term of office for which the justice is elected the justice is ineligible for other public office even should the justice resign or retire before the expiration of the term.

There are policy reasons for imposing this harsh prohibition on justices and judges who choose to retire from their judicial office before the end of the term to which they were elected. The ineligibility provision is intended to promote and protect judicial independence and impartiality, as discussed in the *Lungren* decision.

Lungren v. *Davis* considered whether an appointed Superior Court judge who was elected to a full term was subject to the ineligibility provision if he resigned before the commencement of his elected term. The *Lungren* court held that a trial judge who took

office by the Governor's appointment is not subject to the ineligibility provision unless he or she takes the oath for their elected term. "The disqualification provisions of section 17 accrue upon the assumption of office for an elective term ... and thus a person who is elected but does not qualify and assume the office also is not ineligible for other public office or employment." *Lungren v. Davis*, 234 Cal.App.3d, *supra*, at 828..

The court in *Lungren* left undecided the question posed here, saying "In view of this conclusion it is unnecessary to determine the actual period of ineligibility for public office which accrues when an elected judge assumes office and then resigns." *Id.* at 831.

The *Lungren* court reviewed the scattered decisions over the past 150 years that applied "term" in its Article VI context to a judicial office. These decisions all considered the term of office for a trial judge, and the *Lungren* court cautioned that there are "many differences" between "the office of superior court judge and that of justice of the Supreme Court or Court of Appeal." *Lungren v. Davis*, 234 Cal.App.3d, *supra*, at 818-819. Nonetheless, the policy reasons discovered by the Lungren court for the term provisions to safeguard judicial independence and impartiality apply equally to appellate justices as well as to trial judges.

The *Lungren* court observed that in *People v. Sanderson* (1866) 30 Cal.160, an early case in which it was held that the Chief Justice could not also hold a position within the executive branch, the Court's opinion relied on the separation of powers doctrine. The *Sanderson* court in 1866, as quoted by *Lungren* 125 years later, said:

> "One of [the doctrine's] objects seems to have been to confine Judges to the performance of judicial duties; and another to secure them from entangling alliances with matters concerning which they may be called upon to sit in judgment; and another still to save them from the temptation to use their vantage ground of position and influence to gain for themselves positions and places from which judicial propriety should of itself induce them to refrain. In the same spirit was conceived the sixteenth section of Article VI of the Constitution, which declares that [judges shall be ineligible to public office during the term for which they are elected.]. (Id. at p. 168.)" *Lungren v. Davis*, 234 Cal.App.3d, *supra*, at 826.

Lungren then discussed the reasons for prohibitions that the Constitution imposes upon persons assuming elected judicial positions.

> [O]ur constitutional scheme for the selection of judges is designed to maintain the independence and impartiality of the judiciary and

> in this scheme a tenure of respectable duration is "by far the most essential means to the same end." (People v. Burbank, supra ...)... There are provisions at the front end and on the back end of this design to promote judicial independence.

The *Lungren* court, in a part not quoted here, described that the constitutional provision that a six-year Superior Court term is commenced by election as a part of the design that protects judicial independence. Then continuing the *Lungren* court said (*Id.* at 826):

> On the back end, once elected, a judge has a guaranteed term of respectable length during which neither the Governor nor the Legislature can interfere with his compensation. In return for these protections, the provisions of section 17 render an elected judge ineligible for other non-judicial public employment during this protected term. Thus, the limitation of the ineligibility in section 17 to elected judges fosters the policy embedded in article VI and adds further credence to the conclusion that the definition of the work "term" in section 17 is to be found in section 16.

The policy reason for the ineligibility provision that proscribes justices and judges alike from taking non-judicial public employment until the term for which they were elected expires is to promote judicial independence, the separation of powers and judicial impartiality. The State is a frequent litigant in the courts. The executive branch and, to a more limited extent, the legislative branch, have many appointments and positions to which a justice or judge could aspire. The ineligibility provision serves to substantially reduce, if not eliminate, the possibility that a judge or justice in considering cases could be influenced by aspiration to public office or public employment. This reasoning applies as strongly, or even more strongly, to appellate justices because, unlike trial judges, they are responsible for articulating in written decisions a rule of law that is precedent for like cases. Limiting the effect of the ineligibility provision to sitting judges and justices, as plaintiff urges, would substantially erode its protections in that any judge or justice aspiring to non-judicial office or employment would know that by simply resigning he or she would be eligible for the position aspired to. In its plainest expression, a justice contemplating, in the words of the Constitutional Revision Commission staff notes, "an appointment in return for a decision," would not be deterred at all, since by simply resigning, the judge or justice would become eligible for the appointment traded for.

It is properly argued that the civil disability that is imposed by the ineligibility provision is harsh, not only with respect to the retired judges and justices who are affected but also because the prospective public employer is deprived of the talents a

retire judge or justice could offer that employer. However, as the court has found that the ineligibility provision applies not only to active judges and justices but also to those that have retired or resigned for the duration of the terms to which they were elected, and, further, that such provision has a reasonable relation to substantial and important public policies, the court must uphold the constitutional provision as written. The court, accordingly, denies plaintiff relief under his first cause of action.

THE APPLICATION OF ARTICLE VI, SECTION 17 TO JUSTICE GILBERT DOES NOT VIOLATE EQUAL PROTECTION AS THE PROVISION APPLIES TO ALL JUSTICES OF THE COURT OF APPEAL AND SERVES A VALID PURPOSE:

Justice Gilbert's second cause of action seeks declaratory relief, specifically a judicial declaration that if Article VI, Section 17 is construed to bar public employment of a person who is no longer a judge of a court of record, Section 17 violates equal protection under Article 1, Section 7 of the California Constitution and the Fourteenth Amendment of the United States Constitution.

Justice Gilbert alleges that as so construed Section 17 treats similarly situated judges and justices differently and without valid reason. He cites this example as pertinent:"[a] justice who retires at the end of his elected term will face no bar to post-retirement public employment, while a justice who retires ... during his elected term could face up to a near-twelve-year bar to post-retirement public employment." (Complaint, para. 26.)

Equal protection analysis requires a determination of whether a statute or constitutional provision has classified persons in similar circumstances differently without a sufficiently valid reason. The U. S. Supreme Court has offered this general description of equal protection:

> The Equal Protection Clause ... denies to States the power to legislate that different treatment be accorded to persons placed by statute into different classes on the basis of criteria wholly unrelated to the objective of the statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumscribed shall be treated alike."

Reed v. Reed (1971) 404 U.S. 71, 75-76, quoting *Royster Guano Co. v. Virginia* (1920) 253 U.S. 412, 415. The definition of equal protection under the state Constitution is in accord. "The 'equal protection' provisions of the federal and state Constitutions protect

only those persons similarly situated from invidiously disparate treatment." *Duffy v. State Personnel Bd.* (1991) 232 Cal.App.3d 1, 20, citing *Brown v. Merlo* (1973) 8 Cal.3d 855, 861.

This court's view is that Justice Gilbert does not suffer a denial of equal protection. "The first perquisite to a meritorious claim under an equal protection analysis is a showing that the state has imposed a classification which affects two or more similarly situated groups in an unequal manner." *In re Eric J.* (1979) 25 Cal.3d 522, 530 (emphasis original). Similarly this is the first condition for equal protection analysis under the federal Constitution. *Reed v. Reed*, 404 U.S., supra, at 75-76. There is no differential classification of Justice Gilbert vis a vis other elected justices of the Court of Appeal. As among justices of the Court of Appeal, the ineligibility provision applies equally to all justices who are serving a term to which they have been elected. If there is a differential impact it would be due to the choice of the individual justice as to when to resign or retire.

In the hypothetical above cited from the complaint, a justice who decides to retire at the end of his or her term would be able to seek other public employment after a shorter period than a justice who decides to retire closer to the beginning of his or her elected term. This is not a denial of equal protection as the ineligibility provision applied equally to both justices. That one justice chose to continue to serve in his elected term for a shorter period is not connected to any classification among groups imposed by the state. In the hypothetical the justices are treated equally, not differently.

Justice Gilbert argues that a denial of equal protection is evident in the different treatment in Section 17 between justices and trial judges. He notes that "a sitting trial judge could take a leave of absence to run for public office..., but a retired judge could not run for public office." (Complaint, para. 26.) Section 17 does treat trial judges differently from justices in that trial judges, but not justices, can seek elective office during their term by taking a leave of absence without pay before filing a declaration of candidacy. There are, however, significant differences between the elected terms of trial judges and justices. A justice, for instance, serves a longer term and cannot be challenged by an opponent in a retention election. There are differences too in their roles in the justice system: justices participate in panels that write opinions that, once published, become precedent for similar disputes. In light of this difference, the drafters may well have decided that justices should be to a greater degree protected from removal from office and consistently restricted from seeking public office while serving in the term to which they were elected.

There are, in short, rational reasons for differentiating between justices and trial

judges based on the roles they serve in our justice system. *Alex v. County of Los Angeles, supra*, also upheld the exception in Section 17 that permits a trial judge to seek elective office, after taking a leave of absence from judicial office, from an equal protection challenge. The *Alex* court held that Section 17 is "general" in character, that the class was validly selected, operates uniformly and does not violate the equal protection clause." *Alex*, 35 Cal.App.3d, supra, 1001. The distinctions drawn by the exception permitting trial judges to seek elective office during their term are necessary to meet "the compelling, legitimate state purpose and policy underlying the provision," to save judges from potential conflicts of interest and conserve judges' time. *Ibid. Alex* having upheld the constitutionality of the exception for the election of trial court judges, the assertion that the exception results in an equal protection violation has not merit.

Justice Gilbert, moreover, did not offer any evidence that he was interested in seeking elective office.

Justice Gilbert, as a final example, argues equal protection is violated because "two justices could be appointed on the very same day to fill two vacancies and both could later retire on the very same day and yet face dramatically different restrictions post-resignation [due] only as a result of the different amount of time remaining on the unexpired term they assumed when appointed." The court does not understand this to indicate a denial of equal protection. If a justice is appointed to an unexpired term, the justice is not subject to Section 17's post-resignation prohibitions because the justice is not serving in a term to which he or she was elected. *Lungren v. Davis, supra*, holds that only upon being elected to and assuming a term is a judge or justice subject to post-employment restrictions.

Justice Gilbert also alleged that Section 17 violates due process. (Complaint, para. 32.) The allegation is not further developed and no evidence at trial was offered on the allegation. "To establish a substantive due process claim, a plaintiff must show a government deprivation of life, liberty or property." *Nunez v. City of Los Angeles* (9th Cir. 1998) 147 F.3d 867, 871. Life and liberty are not involved; and Justice Gilbert has not shown that he has been or is threatened to be deprived of an interest in property.

The court will enter judgment for defendant Controller on the second cause of action seeking declaratory relief.

ISSUANCE OF JUDGMENT:

The court will enter judgment for defendant Controller on the complaint. Each side has previously submitted a proposed judgment. The court shall sign and enter the

Judgment as proposed by the Controller.

The court will not sign the Judgment until the parties have had an opportunity within the next 10 days, plus five allowed when service is by mail, to suggest modifications and proposals to this Statement of Tentative Decision under Code of Civil Procedure section 632 and CRC 3.1590.

This Statement of Tentative Decision shall become automatically the court's final decision if no objections or requests for modification are served and filed within 15 days. CRC 3.1590 (f).

The Clerk is directed to serve this Statement of Tentative Decision by U.S. Mail on this date.

Dated: July 5, 2013

RICHARD L. FRUIN, JR.
Superior Court of California,
County of Los Angeles

EXHIBIT 8

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OF THE UNITED STATES

SUPREME COURT
OF THE UNITED STATES

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Supreme Court Documents

Supreme Court Information

No. 13-605
Title: ASAP Copy and Print, et al., Petitioners
v.

Canon Business Solutions, Inc., et al.

Docketed:	November 18, 2013
Linked with 13A375	
Lower Ct:	Court of Appeal of California, Second Appellate District
Case Nos.:	(B232801)
Decision Date:	May 1, 2013
Rehearing Denied:	May 24, 2013
Discretionary Court Decision Date:	July 24, 2013
	Rule 12.4

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Oct 11 2013	Application (13A375) to extend the time to file a petition for a writ of certiorari from October 22, 2013 to December 21, 2013, submitted to Justice Kennedy.
Oct 22 2013	Application (13A375) granted by Justice Kennedy extending the time to file until November 6, 2013.
Nov 6 2013	Petition for a writ of certiorari filed. (Response due December 18, 2013)

~~Name~~~~~~~~~~~~~~~~~~~~	~~~~~~~Address~~~~~~~~~~~~~~~~~~	~~Phone~~~~
Attorneys for Petitioners:		
Nina Ringgold Counsel of Record	9420 Reseda Boulevard No. 361 Northridge, CA 91324	(818) 773-2409

Party name: ASAP Copy and Print, et al.

EXHIBIT 9

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

4th Appellate District Division 3 Change court

Court data last updated: 10/19/2013 10:05 PM

Docket (Register of Actions)

Gilbert v. Controller of the State of California
Case Number G049148

Date	Description	Notes
10/17/2013	Supreme Court order filed transferring case in.	Dist. 4 Div. 3 from Second Appellate District Los Angeles Court of Appeal (B251174)
09/13/2013	Notice of appeal lodged/received.	aplt. Arthur Gilbert
09/17/2013	Filing fee.	in Los Angeles Court of Appeal Check # 2092193
09/18/2013	Civil case information statement filed.	
09/23/2013	Notice per rule 8.124 - with reporter's transcript.	
10/04/2013	Letter sent to:	Supreme Court requesting transfer of this matter to another appellate district due to the recusal of a majority of the justice of this court.
10/14/2013	Supreme Court order filed transferring case in.	Supreme Court order filed transferring case to Court of Appeal, 4th Appellate Dist., Div. 3.

Click here to request automatic e-mail notifications about this case.

EXHIBIT 10

Filed 11/6/13

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DAVID M. VESCO,

Petitioner,

v.

THE SUPERIOR COURT OF VENTURA COUNTY,

Respondent;

TAWNE MICHELE NEWCOMB,

Real Party in Interest.

2d Civil No. B249447
(Super. Ct. No. 56-2010-00384846-CU-OR-VTA)
(Ventura County)

California Rules of Court, rule 1.100[1] allows persons with disabilities to apply for "accommodations" to ensure they have full and equal access to the courts. Rule 1.100 (c)(4) prohibits disclosure of the applicant's confidential information to persons "other than those involved in the accommodation process."

The trial court twice granted real party in interest's motion for continuance of trial pursuant to rule 1.100. Petitioner received no prior notice and the court denied his request to view the medical documents on which real party in interest relied to obtain a continuance.

[1] All references to rules are to the California Rules of Court.

We conclude petitioner is a person involved in the accommodation process. Therefore he has the right to notice, to view the documents on which the real party in interest relies, and to an opportunity to be heard. We issue a peremptory writ of mandate. We direct the superior court to vacate its June 12, 2013 order granting a continuance to real party in interest.

FACTS

David M. Vesco is plaintiff in a civil action. He alleges that: He and defendant Tawne Michele Newcomb were in a long-term relationship. During the relationship, Vesco purchased a home. Although Newcomb did not contribute to the purchase or maintenance of the home, she now has its sole possession. While Newcomb is living in the home, rent-free, Vesco is paying the mortgage and other expenses. Vesco seeks to recover possession of the home.

On June 11, 2012, the trial court scheduled trial in the action for April 22, 2013.

On April 4, 2013, Newcomb filed a motion to continue trial, claiming that she needed urgent medical procedures. Vesco opposed her motion. On April 12, 2013, the trial court denied Newcomb's motion without prejudice to her right to refile it with supporting documentation.

On April 15, 2013, Newcomb filed an ex parte motion for accommodations under the Americans With Disabilities Act (ADA), 42 United States Code section 12101et seq., requesting a continuance of trial based on her health, pursuant to rule 1.100 (a)(1). Vesco was not served with a copy of the motion nor notified of it until after the trial court granted it.

On April 16, 2013, the trial court sent Vesco's counsel a copy of its minute order that stated: "Defendant Tawne Newcomb has made a confidential ADA request. As part of the court's response to the request, the trial date in this matter is continued from April 22, 2013, to June 3, 2013, at 1:30 p.m., in Courtroom 20."

On April 18, 2013, Vesco filed an ex parte application to examine and photocopy all documents in the trial court's possession concerning Newcomb's request for

ADA accommodation. Vesco claimed that (1) Newcomb's sole objective was to delay trial so she could remain in the home he was paying for; (2) she had a proven history of filing false documents with the court; and (3) he needed to review her request to determine the basis for the court's order, and whether he should seek reconsideration or writ review of the order pursuant to rule 1.100 (g).

On April 18, 2013, the trial court denied Vesco's ex parte application. The hearing was not reported.

On April 24, 2013, Vesco petitioned this court for a writ of mandate ordering the trial court to allow him access to all materials it relied on to grant the trial continuance. On May 29, 2013, we summarily denied his petition.

The trial court's minute order of May 30, 2013, states that Newcomb made another confidential request for an accommodation under the ADA. The court ordered the trial continued to June 17, 2013, so that it would have time to review the request.

On June 12, 2013, pursuant to Newcomb's ADA request, the court again continued the trial to August 12, 2013.

On June 16, 2013, Vesco renewed his petition for writ of mandate in this court.

DISCUSSION

Vesco contends the trial court erred in granting Newcomb continuances without first allowing him the opportunity to view the documents on which she relies and the opportunity to be heard. Vesco claims he is prejudiced in that he continues to pay the mortgage and maintenance costs on the house while Newcomb lives there rent free.

Rule 1.100 (a) and (b) allows persons with disabilities covered by the Unruh Civil Rights Act, Civil Code section 51 et seq., the ADA, or other applicable state and federal laws to apply for accommodations to ensure full and equal access to the judicial system. The application may be made ex parte. (Rule 1.100 (c)(1).) Under the appropriate circumstances, an accommodation may be a trial continuance. (*In re Marriage of James M. & Christine J. C.* (2008) 158 Cal.App.4th 1261, 1273, fn. 4.)

Rule 1.100 (c)(4) provides, in part, that "[t]he applicant's identity and confidential information may not be disclosed to the public or to persons other than those involved in the accommodation process." Here the question is whether Vesco is a person "involved in the accommodation process." (*Ibid.*) The answer is obvious: It is his trial that is being continued and he is the person forced to make the accommodation.

When a party raises her physical condition as an issue in a case, she waives the right to claim that the relevant medical records are privileged. (See Evid. Code, § 996 & *City & County of S.F. v. Superior Court* (1951) 37 Cal.2d 227, 232 ["The patient-litigant exception precludes one who has placed in issue his physical condition from invoking the privilege on the ground that disclosure of his condition would cause him humiliation. He cannot have his cake and eat it too"].) The reason for the waiver is self-evident. It is unfair to allow a party to raise an issue involving her medical condition while depriving an opposing party of the opportunity to challenge her claim. A challenge requires access to the medical records on which a party relies and an opportunity to be heard. Otherwise, the challenge is in name only. That rule 1.100 (c)(1) allows the application to be made ex parte does not dispense with the requirement of notice. (Rule 3.1203 (a).)

Vesco contends the trial court incorrectly analogized Newcomb's motion to a *Pitchess* motion when a defendant in a criminal case seeks to discover information contained in a peace officer's personnel file. (Evid. Code, § 1043 et seq.; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) We agree. A *Pitchess* motion must be noticed with a supporting affidavit disclosing good cause. (Evid. Code, § 1043, subds. (a) & (b)(3).) The peace officer's personnel records are presented to the court by a custodian of public records, not by a party to the action. (See *People v. White* (2011) 191 Cal.App.4th 1333, 1339.) It is true that the trial court examines the records in camera, outside the presence of the defendant and his counsel. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226.) But the trial court's duties in a *Pitchess* motion are limited. The court must first perform the ministerial task of determining whether the peace officer's personnel records contain the type of information the defendant is entitled to discover. The court then

makes the legal determination whether the information is relevant. (See Evid. Code, § 1045, subd. (b).)

These are substantial differences between the procedures employed in a *Pitchess* motion and the procedure employed here. Here the trial court determined that Newcomb's claim of a disability was credible. But Vesco did not have the opportunity to challenge the credibility of the claim. No such opportunity is required in a *Pitchess* motion because the court makes no determination whether the information contained in the personnel file is credible.

The *Pitchess* procedures are designed to provide a balance between the defendant's right to a fair trial and a peace officer's interest in privacy. (*People v. Mooc*, *supra*, 26 Cal.4th at p. 1227.) The procedure employed by the trial court in deciding Newcomb's claim of disability provides no such balance. Vesco was shut out of the process entirely.

Vesco has the right to have his trial as soon as circumstances permit. (See *In re Marriage of Johnson* (1982) 134 Cal.App.3d 148, 154.) It follows that he may challenge Newcomb's request for a continuance. He therefore must be given notice and an opportunity to view the medical records and other material on which Newcomb relies. Of course, the trial court must protect Newcomb's privacy as far as practical. For example, it may hold the hearing in camera, order Vesco and his counsel not to disclose the contents of the medical records, seal the record of the proceedings, and take other steps as it deems appropriate to accomplish this goal.

DISPOSITION

We grant the petition. Let a peremptory writ of mandate issue. We direct the respondent court to vacate its order of June 12, 2013, granting a continuance of trial as an accommodation under rule 1.100 without providing petitioner notice, an opportunity to view the documents on which real party in interest relies and an opportunity to be heard, and to enter a new order consistent with this opinion. The order to show cause, having served its purpose, is discharged.

The parties shall bear their own costs.

CERTIFIED FOR PUBLICATION.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

EXHIBIT 11

Metropolitan News-Enterprise

Tuesday, December 17, 2013

Page 1

U.S. District Judge Audrey B. Collins Under Consideration for C.A.

By KENNETH OFGANG, Staff Writer

The name of U.S. District Judge Audrey B. Collins has been sent to the State Bar Commission on Judicial Nominees Evaluation as a possible candidate for appointment to this district's Court of Appeal, the MetNews has learned.

Collins, 68, who did not return a phone call, could fill any of four seats currently vacant in the district, or potentially a future vacancy.

The current openings result from the retirements of Justices Paul Coffee from Div. Six on Jan. 31 of last year, Justice Kathryn Doi Todd from Div. Two on Jan. 22 of this year, Justice Frank Jackson from Div. Seven June 30 of this year, and Justice Orville Armstrong from Div. Five a month later.

Possible Presiding Justice

Collins, a former chief judge of the district, might also be considered as presiding justice in Div One, a post from which Robert Mallano is retiring Feb. 28, the same day that Justice Steven Suzukawa is retiring from Div. Four.


AUDREY B. COLLINS
U.S. District Judge

She was appointed to the federal bench by then-President Bill Clinton in 1994. At the time, she was the assistant district attorney for Los Angeles County, the No. 3 position in the office.

Collins graduated Phi Beta Kappa from Howard University in 1967, and earned her master's degree in government and public administration from American University in 1969. She graduated Order of the Coif from UCLA's law school in 1977, and joined the Legal Aid Foundation of Los Angeles as an assistant staff attorney.

One year later, Collins became a deputy district attorney for Los Angeles County. She served as the head deputy in the Torrance branch office from 1987-1988, assistant director of the Bureau of Central and Special Operations from 1988-1992, and assistant district attorney from 1992-1994.

She also served as deputy general counsel to William H. Webster, in his capacity as special advisor to the Los Angeles Board of Police Commissioners following the civil unrest of 1992.

She served as chief judge of the district court from 2008 until last year, when she stepped down three years prior to the completion of her term.

Larson Resignation

It was in her capacity as chief judge that she issued a six-page statement on the occasion of Judge Stephen G. Larson's resignation in 2009. The district, she said, "faces a crisis of retention…due in large part to two factors: stagnating judicial compensation and ever-increasing caseloads."

She noted that Larson, who went into private practice, was the eighth judge to resign or retire in an 11-year period, contrary to the longstanding tradition that federal judges serve for life, whether on active or senior status.

She noted that five had become private judges, giving them "the potential to earn the equivalent of a district judge's annual salary in a matter of months," while two had accepted state court appointments "at a higher salary and better health benefits."

EXHIBIT 12

Metropolitan News-Enterprise

Thursday, December 19, 2013

Page 1

Judge Sanjay Kumar Under Consideration for C.A.

By a MetNews Staff Writer

Los Angeles Superior Court Judge Sanjay T. Kumar is under consideration for appointment to this district's Court of Appeal, the jurist confirmed yesterday.

Kumar, 48, has been a judge of the court since 2005. He was a commissioner from 2001 to 2005 and was a state deputy attorney general for the first 11 years of his legal career.

He declined to discuss his interest in the position, beyond acknowledging that his name has been sent to the State Bar Commission on Judicial Nominees Evaluation as a possible appointee.

"I think I should just let the process play itself out," he said.

SANJAY T. KUMAR
Los Angeles Superior Court Judge

Four Vacancies

The MetNews reported yesterday that U.S. District Judge Audrey B. Collins of the Central District of California, a former chief judge of the district, is under consideration as well. The court has four associate justice vacancies in various divisions, with Presiding Justice Robert Mallano slated to leave Div. One and Justice Steven Suzukawa set to depart Div. Four at the end of February.

Kumar, who handily beat back an election challenge last year, is a Chicago native who attended public schools there and is a graduate of Loyola University in that city. He came west to attend Pepperdine Law School, was admitted to the State Bar in 1990, and represented the state in criminal appeals until Superior Court judges tapped him as one of the court's commissioners.

High Profile Cases

His work for the state included the high-profile cases of Charles Keating Jr. and Lyle and Erik Menendez.

Keating, the former head of Lincoln Savings, was convicted in 1991 of securities fraud in connection with massive sales of "junk bonds," primarily to elderly persons. The Court of Appeal affirmed in 1993, the Supreme Court

initially granted review but later dismissed it as improvidently granted, but the convictions were later thrown out on a federal writ of habeas corpus.

The Menendez brothers were convicted of murdering their prominent and wealthy parents in their Beverly Hills home. Their convictions were affirmed in 1998.

Kumar has had a range of assignments on the Superior Court, including traffic and criminal trials, and now sits as one of four judges of the Appellate Division. He has also sat by assignment in Div. Five of this district's Court of Appeal.

Kumar is a Republican.

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2014 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

APPELLANTS' MOTION FOR JUDICIAL NOTICE

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on February 13, 2014 at Los Angeles, California.

s/ Matthew Melaragno

EXHIBIT 2

9th Cir. Civ. Case No. 14-56603
USDC Case No. 2:14-cv-03688-R-PLA

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ASAP COPY AND PRINT, ALI TAZHIBI dba ASAP COPY AND PRINT, NINA RINGGOLD, ESQ AND THE LAW OFFICES OF NINA RINGGOLD,
Appellants,

v.

JERRY BROWN in his Individual and Official Capacity as Governor of the State of California and in his Individual and Official Capacity as Former Attorney General of the State of California et al.
Appellees.

From the United States District Court for the Central District, The Honorable Manuel Real

---

APPELLANTS' REQUEST FOR JUDICIAL NOTICE NO. 1

NINA R. RINGGOLD, ESQ.
(SBN (CA) 133735)
LAW OFFICE OF NINA R. RINGGOLD
9420 Reseda Blvd. #361
Northridge, CA 91324
Telephone: (818) 773-2409
Facsimile: (866) 340-4312
Attorney for the Appellants

DECLARATION OF NINA RINGGOLD

1. I attorney of record for the appellants. If called as a witness I could and would competently testify to the matters stated herein.

2. The following Exhibits are true and correct copies of the documents which are the subject of the appellants' request for judicial notice. Appellants request judicial notice pursuant to Rule 201 of the Federal Rules of Evidence.

1) **Filed: April 26, 2013.** Affidavit Exhibit 56. Writ of Mandamus in *All Current Clients of the Law Office of Nina Ringgold v. Jerry Brown et al*, United States Court of Appeals for the Ninth Circuit Case No. 13-71484 (USDC (Eastern) Case No. 12-cv-00717-JAM) (BS 10-23)[Defendants Jerry Brown and Kamala Harris were always aware that clients of the law office were claiming retaliation by use of CCP Sec. 391.7 when clients attempted to collectively obtain injunctive relief].

2) **Filed:** April 26, 2013. Bates Stamp Nos. 425-426 of Exhibits to Appendix in USCA 9th Cir. 13-71484 Writ of Mandamus, Declarations of Ali Tazhibi owner of ASAP Copy and Print submitted in *All Current Clients of Law Offices of Nina Ringgold v. Jerry Brown et al.* (USDC (Eastern District) Case No. 12-cv-00717-JAM-JFM and in *Justin Ringgold-Lockhart et al v. County of Los Angeles et al* Case No. 11-cv-01725-R-PLA [Defendants Jerry Brown and Kamala Harris were always aware that clients of the law office were claiming retaliation by use of CCP Sec. 391.7 when clients attempted to collectively obtain injunctive relief]

3) **Filed: August 27, 2014.** Mandate in *Ringgold-Lockhart v. County of Los Angeles* (USCA 9th Cir. 11-57231)[reversal of pre-filing injunction of Judge Real]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 14, 2015.

/s/ Nina R. Ringgold_____

EXHIBIT 1

9th Cir. Civ. Case No. _______
USDC Case No. CV12-00717-JAM-JFM

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE LAW OFFICES OF NINA RINGGOLD AND ALL CURRENT CLIENTS THEREOF on their own behalves and all similarly situated persons,

Petitioners,

v.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA,

Respondent,

JERRY BROWN in his Individual and Official Capacity as Governor of the State of California and in his Individual and Official Capacity as Former Attorney General of the State of California; KAMALA HARRIS in her Individual and Official Capacity as Current Attorney General of the State of California; COMMISSION ON JUDICIAL PERFORMANCE OF THE STATE OF CALIFORNIA as a state agency and constitutional entity, ELAINE HOWLE in her Individual and Official Capacity as California State Auditor and DOES 1-10.

Real Parties In Interest.

From the United States District Court for the Central District
The Honorable John A. Mendez

EXHIBIT 56 to AFFIDAVIT

NINA RINGGOLD, Esq. (SBN #133735)
Attorney for Petitioners
Law Offices of Nina R. Ringgold
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409

EXHIBIT 56

January 30, 2013 email 1:39 p.m. from Law Office of Nina Ringgold to Office of Attorney General

Subj: **Ex Parte Notification-2:12-CV-00717-JAM-JFM, Ringgold et al v. Brown et al**
Date: 1/30/2013 1:39:57 P.M. Pacific Daylight Time
From: Nrringgold@aol.com
To: Catherine.Woodbridge@doj.ca.gov, toledo@mgslaw.com

Case No.: 2:12-CV-00717-JAM-JFM, Ringgold et al. v. Brown et al.

Dear Counsel:

My office provided you with notice on January 24, 2013 and January 25, 2013 regarding an ex parte application in the above-referenced matter. As you are aware, following the district court's January 23, 2013 order, the United States Court of Appeals for the District of Columbia Circuit decided the case of *Noel Canning v. NLRB*, No. 12-1115, (January 25, 2013). My office needed some time to review this 47 page decision. Upon review we believe this decision will impact primary issues in the instant case.

There are two petitions for writ of certiorari submitted to the United States Supreme Court that are related to the instant case: *Ringgold et al v. Brown et al* and *ASAP Copy and Print et al v. Canon Business Solutions*. (involving plaintiff client of the Law Office in *Ringgold et al v. Brown et al*)

You are given further notice and an updated notice regarding the ex parte application. Plaintiffs will be filing by no later than January 31, 2013 an ex parte application (1) for stay pending disposition of petition for writ of certiorari; (2) for reconsideration and/or to vacate, or for other relief (including leave to amend); Alternatively for (4) stay and certification under Rule 54 (b) and/or 28 U.S.C. 1292.

Since urgent relief is required and this application is being made in advance of seeking relief in the United States Supreme Court and/or United States Court of Appeals, please let me know in advance or upon receipt whether you believe there can be a stipulation fashioned as to any of the relief requested and whether you will be opposing the application.

Also, please let me know whether you are willing to stipulate to vacate the order and judgment, agree that the December 6, 2011 order does not apply to all plaintiff clients of the law office (which is in fact all of the plaintiffs), and allow an amended complaint to be filed as to all plaintiff clients of the law office. Also, let me know if you will stipulate to a certification order or to stay the sanction order. The ex parte application requests that the sanction solely be imposed against counsel and not the client and that there be a stay of enforcement and an alternative non-monetary order based on the inability to pay. See *Haynes v. City and County of San Francisco*, 688 F.3d 984 (9th Cir 2012).

I would like to request that counsel for Brown and Harris confer with counsel who previously represented Brown and Harris in CV11-01725 about the prior declaration which had been served and filed by ASAP Copy and Print and Ali Tazhibi in that case. This declaration demonstrated that this plaintiff client of the law office (like others) was claiming harm by the method of application of CCP 391.7. Therefore, Brown and Harris were aware, before they filed the motion to dismiss and for sanctions, that the instant action was not to circumvent any order and that the harmed clients of the law office are not "window dressings". Said client has updated his declaration and it will be submitted in the ex parte application.

ASAP's case demonstrates that there was retaliation and viewpoint discrimination directly related to Aubry Family Trust. The defendants counsel in that proceeding made repeated filings in ASAP's case concerning the Aubry Family Trust claiming and/or inferring that ASAP should be treated as "vexatious" merely by association with the Law Office. Additionally, the defendant counsel who was making these filings also made the request to seal records completely dispositive to ASAP's case. The sealing order is addressed in the petition for writ of certiorari which will be included in the ex parte application. The defendant counsel making these claims was engaged in litigation in the federal court with a member of the probate task force. The plaintiffs in that federal litigation (whom my office and clients have no relation to) were raising grievances similar to the constitutional claims in the Aubry Family Trust litigation. ASAP and the Law Office had no knowledge of these adverse relationships and interests and these facts properly form the basis for the First Amendment claims (of impairment of associational interests, viewpoint discrimination, retaliation, blacklisting), and other claims of ASAP and all other clients (who have similar incidents).

The ex parte application will be submitted to:

The Honorable Judge John A. Mendez

United States District Court for the Eastern District
Courtroom No. 6, 14th Floor
501 "I" Street
Sacramento, CA 95814

Nina Ringgold, Esq.

January 31, 2013 email 10:35 a.m. from Office of the Attorney General to the Law Office of Nina Ringgold

Subj: **RE: Ex Parte Notification-2:12-CV-00717-JAM-JFM, Ringgold et al v. Brown et al**
Date: 1/31/2013 10:35:13 A.M. Pacific Standard Time
From: Catherine.Woodbridge@doj.ca.gov
To: nrringgold@aol.com
CC: David.Adida@doj.ca.gov, slau@mgslaw.com, toledo@mgslaw.com

On behalf of defendants Brown and Harris in THIS (2:12-cv-00717 JAM) case, I do not agree to vacate the 12/6/11 order and judgment issued by Judge Real. You know that I did not represent Brown and Harris in Judge Real's matter and I do not appreciate your attempt to bypass counsel of record. If you would like counsel of record in the matter of Ringgold-Lockhart v. County of LA, Case No. 11-1725 to agree to something then I suggest you contact that attorney.

As for your request that I stipulate to stay the sanction order in Eastern District matter, I do not agree. Nor will I agree to any stay of the proceedings. Should the Supreme Court order a response to your petition, I will provide an opposition. Please be assured that I do not believe your petition for cert. has any merit. Further, I do not believe that Canning v. NLRB will have any impact on the facts or ruling in the Eastern District matter.

Catherine W. Guess
Deputy Attorney General
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
(916)445-8216
fax (916) 322-8288

From: Nrringgold@aol.com [mailto:Nrringgold@aol.com]
Sent: Wednesday, January 30, 2013 12:40 PM
To: Catherine Woodbridge; toledo@mgslaw.com
Subject: Ex Parte Notification-2:12-CV-00717-JAM-JFM, Ringgold et al v. Brown et al

Case No.: 2:12-CV-00717-JAM-JFM, Ringgold et al. v. Brown et al.

Dear Counsel:

My office provided you with notice on January 24, 2013 and January 25, 2013 regarding an ex parte application in the above-referenced matter. As you are aware, following the district court's January 23, 2013 order, the United States Court of Appeals for the District of Columbia Circuit decided the case of *Noel Canning v. NLRB*, No. 12-1115, (January 25, 2013). My office needed some time to review this 47 page decision. Upon review we believe this decision will impact primary issues in the instant case.

There are two petitions for writ of certiorari submitted to the United States Supreme Court that are related to the instant case: *Ringgold et al v. Brown et al* and *ASAP Copy and Print et al v. Canon Business Solutions.*(involving plaintiff client of the Law Office in *Ringgold et al v. Brown et al*)

You are given further notice and an updated notice regarding the ex parte application. Plaintiffs will be filing by no later than January 31, 2013 an ex parte application (1) for stay pending disposition of petition for writ of certiorari; (2) for reconsideration and/or to vacate, or for other relief (including leave to amend); Alternatively for (4) stay and certification under Rule 54 (b) and/or 28 U.S.C. 1292.

Since urgent relief is required and this application is being made in advance of seeking relief in the United States Supreme Court and/or United States Court of Appeals, please let me know in advance or upon receipt whether you believe there can be a stipulation fashioned as to any of the relief requested and whether you will be opposing the application.

Also, please let me know whether you are willing to stipulate to vacate the order and judgment, agree that the December 6, 2011 order does not apply to all plaintiff clients of the law office (which is in fact all of the plaintiffs),

and allow an amended complaint to be filed as to all plaintiff clients of the law office. Also, let me know if you will stipulate to a certification order or to stay the sanction order. The ex parte application requests that the sanction solely be imposed against counsel and not the client and that there be a stay of enforcement and an alternative non-monetary order based on the inability to pay. See *Haynes v. City and County of San Francisco*, 688 F.3d 984 (9th Clr 2012).

I would like to request that counsel for Brown and Harris confer with counsel who previously represented Brown and Harris in CV11-01725 about the prior declaration which had been served and filed by ASAP Copy and Print and Ali Tazhibi in that case. This declaration demonstrated that this plaintiff client of the law office (like others) was claiming harm by the method of application of CCP 391.7. Therefore, Brown and Harris were aware, before they filed the motion to dismiss and for sanctions, that the instant action was not to circumvent any order and that the harmed clients of the law office are not "window dressings". Said client has updated his declaration and it will be submitted in the ex parte application.

ASAP's case demonstrates that there was retaliation and viewpoint discrimination directly related to Aubry Family Trust. The defendants counsel in that proceeding made repeated filings in ASAP's case concerning the Aubry Family Trust claiming and/or inferring that ASAP should be treated as "vexatious" merely by association with the Law Office. Additionally, the defendant counsel who was making these filings also made the request to seal records completely dispositive to ASAP's case. The sealing order is addressed in the petition for writ of certiorari which will be included in the ex parte application. The defendant counsel making these claims was engaged in litigation in the federal court with a member of the probate task force. The plaintiffs in that federal litigation (whom my office and clients have no relation to) were raising grievances similar to the constitutional claims in the Aubry Family Trust litigation. ASAP and the Law Office had no knowledge of these adverse relationships and interests and these facts properly form the basis for the First Amendment claims (of impairment of associational interests, viewpoint discrimination, retaliation, blacklisting), and other claims of ASAP and all other clients (who have similar incidents).

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United States District Court for the Eastern District
Courtroom No. 6, 14th Floor
501 "I" Street
Sacramento, CA 95814

Nina Ringgold, Esq.

January 31, 2013 email 4:48 p.m. from Law Office of Nina Ringgold to Office of the Attorney General

Subj: **Re: Ex Parte Notification-2:12-CV-00717-JAM-JFM, Ringgold et al v. Brown et al**
Date: 1/31/2013 4:48:25 P.M. Pacific Standard Time
From: Nrringgold@aol.com
To: Catherine.Woodbridge@doj.ca.gov

In response, I think you are confused. The order and judgment which is the subject of the ex parte notice referenced above is dated 1.23.13 and it was entered in the United States District Court, Judge John A. Mendez not Judge Real.

You are also confused in your reference that there is some effort to bypass counsel of record. You are counsel of record in Case No. 12-cv-00717. If you have a substitution of counsel please file it and provide it to my office.

You were only provided with reminder that client plaintiffs ASAP Copy and Print and Ali Tazhibi had already provided a declaration explaining how they were being adversely impacted by CCP 391.7 and that a reasonable investigation and inquiry would have alerted you to the fact that your signed pleading in the motions for sanctions claiming that segments of the clients of this law office were bringing their claims in order to bypass the December 6, 2011 order (which does not apply to them) was (1) for an improper purpose, (2) not warranted by fact or law (particularly since the state attorney general's office was aware of the clients' verified statement). Although your office has known about the verified statement, my reminder was only to nudge you to comply with your ethical and professional obligation. This confirms this effort was unsuccessful.

As for your other unsolicited opinions, my office simply does not agree. How you determine to handle a response in the Supreme Court is only part of your internal affairs which I do not need to know about.

Thank you for letting me know your position.

Nina Ringgold, Esq.

In a message dated 1/31/2013 10:35:13 A.M. Pacific Standard Time, Catherine.Woodbridge@doj.ca.gov writes:

> On behalf of defendants Brown and Harris in THIS (2:12-cv-00717 JAM) case, I do not agree to vacate the 12/6/11 order and judgment issued by Judge Real. You know that I did not represent Brown and Harris in Judge Real's matter and I do not appreciate your attempt to bypass counsel of record. If you would like counsel of record in the matter of Ringgold-Lockhart v. County of LA, Case No. 11-1725 to agree to something then I suggest you contact that attorney.
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> As for your request that I stipulate to stay the sanction order in Eastern District matter, I do not agree. Nor will I agree to any stay of the proceedings. Should the Supreme Court order a response to your petition, I will provide an opposition. Please be assured that I do not believe your petition for cert. has any merit. Further, I do not believe that Canning v. NLRB will have any impact on the facts or ruling in the Eastern District matter.
>
> *Catherine W. Guess*
>
> Deputy Attorney General
>
> Office of the Attorney General
>
> 1300 I Street

Sacramento, CA 95814

(916)445-8216

fax (916) 322-8288

From: Nrringgold@aol.com [mailto:Nrringgold@aol.com]
Sent: Wednesday, January 30, 2013 12:40 PM
To: Catherine Woodbridge; toledo@mgslaw.com
Subject: Ex Parte Notification-2:12-CV-00717-JAM-JFM, Ringgold et al v. Brown et al

Case No.: 2:12-CV-00717-JAM-JFM, Ringgold et al. v. Brown et al.

Dear Counsel:

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Since urgent relief is required and this application is being made in advance of seeking relief in the United States Supreme Court and/or United States Court of Appeals, please let me know in advance or upon receipt whether you believe there can be a stipulation fashioned as to any of the relief requested and whether you will be opposing the application.

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I would like to request that counsel for Brown and Harris confer with counsel who previously represented Brown and Harris in CV11-01725 about the prior declaration which had been served and filed by ASAP Copy and Print and Ali Tazhibi in that case. This declaration demonstrated that this plaintiff client of the law office (like others) was claiming harm by the method of application of CCP 391.7. Therefore, Brown and Harris were aware, before they filed the motion to dismiss and for sanctions, that the instant action was not to circumvent any order and that the harmed clients of the law office are not "window dressings". Said client has updated his declaration and it will be submitted in the ex parte application.

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The ex parte application will be submitted to:

The Honorable Judge John A. Mendez
United States District Court for the Eastern District
Courtroom No. 6, 14th Floor
501 "I" Street
Sacramento, CA 95814

Nina Ringgold, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2013 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

EXHIBIT 56 TO AFFIDAVIT

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

The following person is not a registered CM/ECF user:

NONE

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on April 26, 2013 at Los Angeles, California.

s/ Matthew Melaragno

EXHIBIT 2

DECLARATION OF ALI TAZHIBI

1. If called as a witness I could and would competently testify to the matters stated herein.

2. I am the owner of ASAP Copy and Print.

3. My company and I are parties in the case entitled *ASAP Copy and Print, Ali Tazhibi dba ASAP Copy and Print v. Canon Business Solutions Inc. et al.* Through the entirety of these proceedings which commenced on or about August 8, 2008 I have been represented by the Law Office of Nina Ringgold. My company and I are also parties in the case of *Nina Ringgold et al. v. Jerry Brown et al* and my company and I have been represented by the Law Office of Nina Ringgold through the entirety of these proceedings which commenced on or about March 21, 2012.

4. I have never been determined to be a vexatious litigant.

5. My company has never been determined to be a vexatious litigant.

6. I retained the Law Offices of Nina Ringgold to represent me and my company in the cases indicted above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 24, 2013.

Ali Tazhibi

DECLARATION OF ALI TAZHIBI

1. If called as a witness I could and would competently testify to the matters stated herein.

2. I am the owner of ASAP Copy and Print.

3. My company and I are parties in the case entitled *ASAP Copy and Print, Ali Tazhibi dba ASAP Copy and Print v. Canon Business Solutions Inc., Canon Financial Services Inc., General Electric Capital Corporation* LASC Case No. PC043358. Through the entirety of these proceedings which commenced on or about August 8, 2008 I have been represented by the Law Office of Nina Ringgold.

4. I have never been determined to be a vexatious litigant.

5. My company has never been determined to be a vexatious litigant.

6. I retained the Law Offices of Nina Ringgold to represent me and my company in the case indicated above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 29, 2011.

EXHIBIT 3

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 27 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUSTIN RINGGOLD-LOCKHART and NINA RINGGOLD,

Plaintiffs - Appellants,

v.

COUNTY OF LOS ANGELES; et al.,

Defendants - Appellees.

No. 11-57231

D.C. No. 2:11-cv-01725-R-PLA
U.S. District Court for Central California, Los Angeles

MANDATE

The judgment of this Court, entered August 04, 2014, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Craig Westbrooke
Deputy Clerk

Certificate of Service

I hereby certify that on June 14, 2015, I electronically filed the following documents with the Clerk of Court by using CM/ECF system:

APPELLANTS' REQUEST FOR JUDICIAL NOTICE NO. 1

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on June 14, 2015 Los Angeles, California.

s/ Matthew Melaragno