

Supreme Court, U.S.
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No. 20-1465

In The
Supreme Court of the United States

Chang Wang and Yen Wang,
Petitioners,

v.

Terilyn Carter-Garrett, Denzel L. Gilmore,
Patricia Simmons, Monica Simmons, Stacy Allen, Tianna
Jackson, Adajye Hampton, Amarij Hampton, Shayah Allen,
Tiffany Martin, Cynthia Pace, Damien Smith, Lateisha
Sutton, Astivon Mcoy, Leo Sutton-Thompson,
and Canzatar Crowder,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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Petitioners *In Pro Per*

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SUPREME COURT, U.S.

I. QUESTION PRESENTED

Whether the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution were violated to deny Petitioners a fair trial due to the bias of the presiding judge when, cumulatively:

1. In her preliminary instructions to the jury the presiding judge instructed the jury to find for the plaintiffs;
2. During the trial, the presiding judge admonished the defendants an inordinate and unconscionable number of times, at least seventeen, in the presence of and not in the presence of the jury;
3. During the trial, the presiding judge sustained the objections of counsel for plaintiffs, an inordinate and unconscionable number of times, at least one hundred thirteen, in the presence of and not in the presence of the jury.
4. During the trial, the judge unfairly and prejudicially allowed testimony from a witness to show a pattern to a prior case in which the

PRIOR LITIGATION

List of Parties: Indicated on Cover Page

List of Proceedings:

1. California First District Court of Appeals
Case No. A155643

Date of Entry of Ruling: November 9, 2020

2. California Supreme Court
Case No. S266064

Date of Disposition: January 13, 2021

TABLE OF CONTENTS

Questions Presented.....	1
Prior Litigation.....	2
Table of Contents	
Table of Authorities	
Petition for Writ of Certiorari.....	3
Statement of Jurisdiction.....	3
Necessity for Review.....	3
U.S. Constitution Provisions.....	3, 4
California Statutes	4
Statement of Facts.....	4
a. Procedural Facts.....	5
b. Substantive Facts.....	5, 6
Argument.....	8
a. TO THE PREJUDICE OF PETITIONERS, JUDGE JONES VIOLATED HER CODE OF ETHICS, CANON 3B(5) WHEN, DURING PRELIMINARY INSTRUCTIONS TO THE JURY, SHE INSTRUCTED THEM THAT THE HOUSING CONDITIONS WERE SUB- STANDARD.....	9

b. TO THE PREJUDICE OF PETITIONERS, JUDGE JONES VIOLATED HER CODE OF ETHICS, CANON 3B(5), WHEN, THROUGH- OUT THE TRIAL, SHE UNREASONABLY AND CONSTANTLY SUSTAINED PLAINTIFFS' OBJECTIONS ONE HUNDRED THIRTEEN TIMES, ADMONISHED DEFENDANT/ PETITIONERS EIGHTEEN TIMES, AND, FROM HE BENCH TOLD THE DEFENDANT/ PETITIONERS TO "STOP TALKING" OR "BE QUIET" TWELVE SEPARATE TIMES.....10
--

Conclusion.....12

APPENDICES

Appendix A.....1A
Appendix B.....2A
Appendix C.....3A

TABLE OF AUTHORITIES

Cases:

<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965).....	3
<i>City of West Covina v. Perkins</i> , 525 U.S. 234 (1999).....	3
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972).....	3
<i>Goldberg v. Kelly</i> , 397 U.S. 254, 271 (1970).....	3
<i>Mathews v. Eldridge</i> ,	3
424 U.S. 319, 333 (1976)	
<i>Michail v. Fluor Mining & Metals</i> (1986) 180 Cal. App.3d 284.....	11
<i>Mullane v. Cent. Hanover Bank & Trust Co.</i> , 339 U.S. 306.....	10
<i>People v. Corella</i> (2004) 122 Cal.App.4th 461.....	11
<i>People v. Freeman</i> (2010) 47 Cal.4th 993.....	10
<i>People v. Green</i> (1980) 27 Cal.3d 1.....	10, 11
<i>People v. Hollie</i> (2010) 180 Cal.App.4th 1262	11
<i>People v. Martinez</i> (1999) 20 Cal.4th 225.....	11
<i>People v. Wright</i> (1985).....	11
39 Cal.3d 576	

<i>Pinter-Brown v. Regents of University of California</i> (2020)	
48 Cal.App.5th 55.....	9
<i>Ramona Manor Convalescent Hosp. v. Care Enters,</i> (1986)	
177 Cal.App.3d 1120.....	11
<i>Schmidt v. Superior Court</i> (2020)	
44 Cal.App.5th 570.....	9, 10

<i>Schrader Iron Works, Inc. v. Lee,</i>	
26 Cal. App. 3d 621 (1972).....	10

<i>Schweiker v. McClure,</i>	
456 U.S. 188, 195 (1982)	3

Constitutions:

U.S. Constitution	
Amendment V.....	

U.S. Constitution	
Amendment XIV.....	

Federal Statutes:

28 U.S.C. § 1257.....	3
-----------------------	---

Rules:

Unites States Supreme Court	
Rules of Court, Rule 11.....	3

State Statutes:

California Evidence Code § 352.....	8, 10, 11, 12
-------------------------------------	---------------

California Evidence Code § 1101(b).....	4, 8, 10, 11
---	--------------

Codes:

California Judicial Code of Ethics
Canon 3B(5).....8, 9, 10

I. PETITION FOR WRIT OF CERTIORARI

Chang Wang and Yen Wang respectfully petitions for a writ of certiorari to review the decision of the California Supreme Court's Order denying their Petition for Review of the First District Court of Appeal's Ruling affirming the findings of the jury after trial and judgment of the Solano County Superior Court. (Please see First District Court of Appeal's Ruling attached as Exhibit A; see also Docket of California Supreme Court's Order denying Petition for Review attached as Exhibit B.)

II. STATEMENT OF JURISDICTION

Chang Wang and Yen Wang's Petition for Review filed with the California Supreme Court was denied on January 13, 2021. The petitioners herein invoke this Court's jurisdiction under 28 U.S.C. § 1257 and under the United States Supreme Court Rules of Court, Rule 11, having timely filed this Petition for Writ of Certiorari within the time of ninety days of the California Supreme Court's ruling.

III. NECESSITY FOR REVIEW

A grant of review will permit ultimate review of issues necessary to settle important questions of legal parameters of judicial bias required, and the extent of prejudice caused, in order for a lower court to confidently vacate and set aside a judgment or ruling to ensure a fair trial required by the Fifth and Fourteenth Amendments to the Constitution. See *City of West Covina v. Perkins*, 525 U.S. 234 (1999); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80–81 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

IV. U.S. CONSTITUTIONAL PROVISIONS AND CALIFORNIA STATE STATUTES

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV section 1:

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Evidence Code § 352:

The court in its discretion may exclude evidence if Its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

California Evidence Code § 1101(b):

(a) . . .

(b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act.

(c) . . .

V. STATEMENT OF FACTS

a. Procedural Facts:

May 1, 2017:	Civil Summons and Complaint filed with the Sonoma County Superior Court
September 6, 2017:	First Amended Complaint filed with the Sonoma County Superior Court. Summons issued
October 6, 2017:	Each of the defendants (Petitioners herein) file their Answers to First Amended Complaint
May 23, 2018:	Trial commences
July 3, 2018:	Judgment on the Verdict entered
September 6, 2018:	Notice of Appeal filed
November 9, 2020:	Ruling filed, First District Court of Appeal
December 11, 2020:	Petition for Review filed with California Supreme Court
January 13, 2021:	Petition for Review denied by California Supreme Court

b. Substantive Facts:

On May 23, 2018, the jury trial of the defendants, Petitioners, began with the Honorable Alesia Jones, judge presiding. (Please see Reporter's Trial Transcripts at Page 2, line 15, attached as Exhibit C.) The Petitioners, landlords to the plaintiffs, were charged in plaintiffs' First Amended Complaint with the following causes of action concerning the residences leased by the Petitioners to the Plaintiffs:

1. Breach of the Implied Warranty of Habitability
2. Habitability Tort
3. Nuisance
4. Violation of Health & Safety Code Section 17920.3
5. Breach of Covenant of Quiet Enjoyment
6. Violations of Civil Code Section 1942.4

7. Negligence
8. Fraudulent Concealment
9. Constructive Eviction
10. Violations of Civil Code Section 1940.2 11 (Please see Docket, September 6, 2017, Entry, attached as Exhibit D.)

Before the trial began, the plaintiffs dismissed the Fourth, Fifth, Sixth, and Tenth Causes of Action. (Please see Trial Transcripts attached as Exhibit A, at Page 10, lines 5-10.)

It is important to note that this petition does not concern itself with the issue(s) of whether the Petitioners/Defendants committed the acts and were at fault as alleged in the complaint filed by the Respondents, but whether the Petitioners/Defendants were afforded constitutional due process during the trial; whether Judge Jones conducted the proceedings without bias thus ensuring a fair trial.

This issue first presents itself when Judge Jones during preliminary instructions to the jury instructs them that the housing conditions were sub-standard. She states at Page 27, lines 19 – 22 of the Reporter's Transcript:

“... They seek monetary damages because of sub-standard conditions existing in the residential rental housing they rented to - - they rented from Chang Wang and Yen Yang who are called the Defendants.”

Then, at Page 30, lines 26 – 28, Judge Jones instructs:

“... You should decide the case against each Defendant separately as if it were a separate Lawsuit.”

These instructions first instructs the jury before testimony or the presentation of evidence or argument that the residential housing rented to the plaintiffs were “sub-standard”. She then instructs that the jury should decide the case against each defendant (separately).

During the trial which began on May 23, 2018, and ended on June 8, 2018, Judge Jones sustained the plaintiffs' objections to the Petitioners' questioning of witnesses one hundred thirteen times.

These can be found in the Reporter's Trial Transcripts, Exhibit C, at the following:

Pg. 349, lines 20-22	Pg. 350, lines 15-17	Pg. 351, lines 4-5
Pg. 352, lines 8-9	Pg. 355, lines 5-6	Pg. 361, lines 5-6
Pg. 361, lines 9-10	Pg. 361, lines 12-13	Pg. 361, lines 17-18
Pg. 393, lines 20-21	Pg. 393, lines 26-27	Pg. 394, lines 2-3
Pg. 396, lines 15-17	Pg. 396, lines 21-22	Pg. 397, lines 23-24
Pg. 397, lines 10-11	Pg. 397, lines 16-18	Pg. 407, lines 23-24
Pg. 409, lines 5-6	Pg. 409, lines 11-14	Pg. 409, lines 19-21
Pg. 410, lines 1-2	Pg. 411, lines 4-5	Pg. 411, lines 13-14
Pg. 419, lines 22-23	Pg. 420, lines 17-18	Pg. 647, lines 21-24
Pg. 648, lines 18-21	Pg. 650, lines 20-23	Pg. 651, lines 1-4
Pg. 656, lines 25-27	Pg. 657, lines 7-8	Pg. 657, lines 19-20
Pg. 664, lines 21-24	Pg. 666, lines 6-7	Pg. 668, lines 5-6
Pg. 668, lines 11-15	Pg. 669, lines 10-12	Pg. 675, lines 25-26
Pg. 679, lines 1-3	Pg. 679, lines 8-11	Pg. 680, lines 7-8
Pg. 681, lines 9-10	Pg. 685, lines 20-21	Pg. 687, lines 16-22
Pg. 696, line 28	Pg. 697, lines 25-26	Pg. 698, lines 13-14
Pg. 700, lines 24-25	Pg. 701, lines 11-12	Pg. 703, lines 23-24
Pg. 704, lines 1-2	Pg. 706, lines 1-2	Pg. 706, lines 25-27
Pg. 707, lines 9-10	Pg. 707, lines 16-17	Pg. 707, lines 20-21
Pg. 708, lines 9-11	Pg. 708: lines 26-27	Pg. 709: lines 23-26
Pg. 715: lines 7-8	Pg. 716: lines 15-17	Pg. 720: lines 22-23
Pg. 721: lines 11-13	Pg. 721: lines 25-26	Pg. 722: lines 28
Pg. 723: lines 1-4	Pg. 725: lines 4-5	Pg. 726: lines 21-23
Pg. 727: lines 2-3	Pg. 730: lines 23-24	Pg. 732: lines 2-3
Pg. 736: lines 3-4	Pg. 962: lines 20-22	Pg. 962: lines 26-27
Pg. 966: lines 8-9	Pg. 969: lines 4-5	Pg. 970: lines 27-28
Pg. 976: lines 4-5	Pg. 976: lines 10-11	Pg. 991: lines 22-24
Pg. 992: lines 2-4	Pg. 1006: lines 15-16	Pg. 1006: lines 19-21
Pg. 1007: lines 4-5	Pg. 1007: lines 7-8	Pg. 1010: lines 12-13
Pg. 1044: lines 16-17	Pg. 1044: lines 24-25	Pg. 1045: lines 25-30
Pg. 1046: lines 7-8	Pg. 1051: lines 18-19	Pg. 1052: lines 2-3
Pg. 1067: lines 18-19	Pg. 1190: lines 14-15	Pg. 1190: lines 23-25
Pg. 1196: lines 3-4	Pg. 1196: lines 13-14	Pg. 1196: lines 18-19
Pg. 1197: lines 8-9	Pg. 1197: lines 23-24	Pg. 1197: lines 26-27
Pg. 1198: lines 9-14	Pg. 1198: lines 17-18	Pg. 1230: lines 14-15
Pg. 1231: lines 18-19	Pg. 1231: lines 22-23	Pg. 1237: lines 2-3
Pg. 1238: lines 19-20	Pg. 1253: lines 22-25	Pg. 1254: lines 28
Pg. 1255: lines 3-4	Pg. 1262: lines 18-20	

Further, Judge Jones "admonished" Petitioner Chang Wang in front of and out of the hearing of the jury a minimum of eighteen times. Some of

these admonishments can be found in the Reporter's Trial Transcripts, Exhibit C at the following:

Pg. 47, lines 11-15	Pg. 47, 23-26	Pg. 346, 24-27
Pg. 356, lines 11-15	Pg. 357, lines 11-13	Pg. 371, lines 8-12
Pg. 392, lines 3-28	Pg. 399, lines 26-27	Pg. 633, lines 12
Pg. 653, 8	Pg. 654, lines 19	Pg. 655, lines 27
Pg. 675, 23-28	Pg. 691, lines 17	Pg. 699, lines 5-7
Pg. 732, 22	Pg. 735, lines 16-27	Pg. 1072, lines 4

Judge Jones further told the Petitioner Chang Wang to either "stop talking" or "be quiet" on twelve separate times. These exclamations can be found in the Reporter's Trial Transcripts, Exhibit C, at the following:

Pg. 385, lines 26	Pg. 459, lines 23	Pg. 653, lines 13
Pg. 398, lines 11	Pg. 460, lines 18	Pg. 1016, lines 14
Pg. 401, lines 23	Pg. 464, lines 14	
Pg. 403, lines 27-28	Pg. 464, lines 26	
Pg. 442, lines 13	Pg. 621, lines 14	

Further, Judge Jones wrongly allowed testimony of Dylan Brady, Deputy City Attorney for the City of Vallejo that described a lawsuit the Petitioners lost. (Please see copy of "Vallejo Complaint" attached as Exhibit D.) Mr. Brady's testimony was allowed under Evidence Code § 1101(b) to allegedly show *modus operandi*, plan or pattern of the defendant Petitioners.

Petitioners objected at the time and now objects under Evidence Code § 352 in that the probative value of Deputy City Attorney Brady's testimony was outweighed by the prejudice it caused by its admittance. (See Argument, below.)

VI. ARGUMENT

Generally.

Petitioners are Chinese by origin who immigrated to the United States from South Korea. English is their second language. They have no legal training and know little of California or Federal law.

In this case both parties appeared at trial *in proper* having difficulty with the English language and virtually without understanding of the law.

Canon 3B(5) of the California Judicial Code of Ethics states:

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression, * religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

Petitioners allege herein that Judge Jones violated this judicial canon of the California Judicial Code of Ethics when, during the trial, she engaged in speech that could reasonably be perceived as bias, prejudice, or harassment (see *Pinter-Brown v. Regents of University of California* (2020) 48 Cal.App.5th 55 [261 Cal.Rptr.3d 486]; *Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 589 [257 Cal.Rptr.3d 699]) at trial by the jury as follows:

- a. **TO THE PREJUDICE OF PETITIONERS, JUDGE JONES VIOLATED HER CODE OF ETHICS, CANON 3B(5) WHEN, DURING PRELIMINARY INSTRUCTIONS TO THE JURY, SHE INSTRUCTED THEM THAT THE HOUSING CONDITIONS WERE SUB-STANDARD.**

The housing conditions of the residences leased to the Plaintiffs goes to the heart of the issues at trial. At Page 27, lines 19-22 of the Reporter's Transcript she instructs the jury and describes that the housing was sub-standard when in describing the Plaintiffs, she states:

“... They seek monetary damages because of sub-standard conditions existing in the residential rental housing they rented to - - they rented from Chang Wang and Yen Yang who are called the Defendants.”

She does not state that the housing conditions were to “alleged” to be sub-standard, but that they were sub-standard.

Then, at Page 30, lines 26 – 28, Judge Jones again violates the Code of Ethics when she instructs the jury:

“... You should decide the case against each defendant separately as if it were a separate lawsuit.”

She is instructing the jury that they “... should decide against each defendant...” (separately). (See Substantive Facts, above.)

Certainly, these instructions could reasonably be perceived by a reasonable jury that the judge maintained a “bias and prejudice” against the defendants.

- b. TO THE PREJUDICE OF PETITIONERS, JUDGE JONES VIOLATED HER CODE OF ETHICS, CANON 3B(5), WHEN, THROUGHOUT THE TRIAL, SHE UNREASONABLY AND CONSTANTLY SUSTAINED PLAINTIFFS' OBJECTIONS ONE HUNDRED THIRTEEN TIMES, ADMONISHED DEFENDANT/PETITIONERS EIGHTEEN TIMES, AND, FROM THE BENCH TOLD THE DEFENDANT/PETITIONERS TO “STOP TALKING” OR “BE QUIET” TWELVE SEPARATE TIMES. (See Substantive Facts, above.)**

The constant and incessant harassment of the Petitioners, especially, Petitioner Chang Wang, by Judge Jones (Exhibit C) had to have had a negative impact on the jury, and it would seem impossible that members of the jury would believe that Judge Jones had anything but a bias and prejudice against Petitioners. At the very least, these extraordinary verbalizations could reasonably be perceived by a reasonable jury that the judge maintained a “bias and prejudice” against the defendants thus causing an unfair trial in violation of the Fifth and Fourteenth Amendments which require a fair trial.

For further discussion, please see *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306; *Schmidt v. Superior Court* (2020), *supra*, at p. 589; *People v. Freeman* (2010) 47 Cal.4th 993 [103 Cal.Rptr.3d 723, 222 P.3d 177]; *Schrader Iron Works, Inc. v. Lee*, 26 Cal. App. 3d 621 [103 Cal. Rptr. 106], 1972 Cal. App. LEXIS 972.

- c. TO PETITIONERS' PREJUDICE, JUDGE JONES ERRED IN ALLOWING EVIDENCE CODE §1101(B) TESTIMONY TO BE HEARD BY THE JURY BASED UPON EVIDENCE CODE § 352 AS THE RECORD DOES NOT AFFIRMATIVELY DEMONSTRATE JUDGE JONES WEIGHED THE PROBATIVE VALUE OF THE EVIDENCE VERSUS ITS PREJUDICIAL EFFECT.**

Evidence Code section 352 provides that "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the

probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evidence Code § 352.)

However, pursuant to California Supreme Court authority, it is settled that if a party seeks to exclude evidence under Evidence Code § 352, the record must affirmatively show that the trial judge did in fact weigh the prejudice against the probative value in relation to ruling on the admissibility of the evidence. *People v. Wright* (1985) 39 Cal.3d 576, 582 [217 Cal.Rptr. 212]; and *People v. Green* (1980) 27 Cal.3d 1, 25 [164 Cal.Rptr. 1], overruled on other grounds in *People v. Martinez* (1999) 20 Cal.4th 225, 239 [83 Cal. Rptr.2d 533]; *Ramona Manor Convalescent Hosp. v. Care Enters.* (1986) 177 Cal.App.3d 1120, 1138 [225 Cal.Rptr. 120]. The trial court must make an affirmative record of its exercise of discretion to facilitate meaningful review in ruling on a . . . motion based upon Evidence Code § 352 grounds. The record must reflect that the judge did in fact weigh prejudice against probative value on a section 352 objection. *Michail v. Fluor Mining & Metals* (1986) 180 Cal. App.3d 284, 287 [225 Cal.Rptr. 403].

The California Supreme Court has indicated the foregoing rule is necessary to permit meaningful appellate review and ensure that the ruling on the motion is "the product of a mature and careful reflection on the part of the judge." *People v. Green*, *supra*, 27 Cal.3d at 24. If there is no express statement by the trial court that it has weighed prejudice against probative value, the record must at least "affirmatively demonstrate that the court did so." *People v. Hollie* (2010) 180 Cal.App.4th 1262, 1275 [103 Cal.Rptr.3d 633] (citations omitted). The record must specifically show the trial court weighed prejudice against probative value. *People v. Corella* (2004) 122 Cal.App.4th 461, 471 [18 Cal.Rptr.3d 770]

In the instant case, the record shows that Judge Jones asked Petitioners whether they objected to the proposed Evidence Code§ 1101(b) testimony. (See Exhibit C at pp. 372-373, lines 28-1.) Though Judge Jones asked whether Petitioner Chang Wang had an objection to the Plaintiff's intent to call Dylan Brady, Vallejo City Attorney, to testify pursuant to Evidence Code § 1101(b) to show Petitioner/defendants' habit, plan or *modus operandi*. It can be assumed that Judge Jones knew and understood the implications of such testimony when she asked Chang Wang whether he objected. It can also be assumed that the Petitioner/defendant had no appreciation nor understanding of the type of testimony proposed.

Judge Jones made no effort at explanation, and out of precaution, Chang Wang nevertheless objected without understanding why he was objecting. (Exhibit C, page 373, lines 1-6.) The record is devoid of any evidence, and

when the record does not affirmatively reveal the trial court made a decision that the prejudicial effect caused by such testimony was outweighed by its probative effect, the inclusion of this evidence cannot be upheld on section 352 grounds.

VI. CONCLUSION

Based on the above arguments, whether cumulatively or separately considered, Petitioners request that this Court find that Petitioners were prevented at trial from receiving their due process rights under the Fifth and Fourteenth Amendments to the Constitution which caused as a result to be victim of an unfair trial and order the case remanded to the Solano County, California Superior Court for further proceedings.

Dated: April 12, 2021.

Respectfully submitted,

/s/ _____
Yen Wang

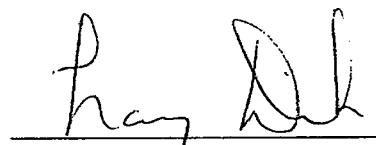
/s/ _____
Chang Wang

CERTIFICATE OF WORD COUNT

I certify that according to the computer program used to prepare this brief, the Petitioner's Petition for Writ of Certiorari contains 3324 words, not including the cover, the Tables of Contents and Authorities, this certificate and the signature block.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 13, 2020.



Larry Dick