

22-391

ORIGINAL

No. _____

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

SHAHROUZ JAHANSHAHI,

Petitioner,

v.

BENJAMIN TARN ROSENFIELD,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

John Adams eloquently stated "we are nation of laws, not men." This petition presents an opportunity for this Court to hold whether the Superior Court of California has adhered to rule of the law or has acted in excess of jurisdiction. The Due Process Clause of the laws guaranteed under the United States Constitution Fourteenth Amendment requires, fair, unbiased, impartial adjudication of the matters before the tribunal.

The questions presented are:

- (1) Does California anti-SALPP statute Code of Civil Procedure § 425.16 protect illegal, unlawful activity?
- (2) Can an Independent Calendar (IC) judge of the California court transfer the action to another department of the court whereas that authority is vested with presiding judge or master calendar judge?
- (3) Whether ghostwriting should be allowed and promoted where there is divided Federal Circuits on this topic?
- (4) Does the Due Process Clause of the law require participation of all three appellate justices for the oral argument as recognized by California Supreme Court?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner Shahrouz Jahanshahi is an individual, and was Plaintiff-Appellant.

Respondent Benjamin Tarn Rosenfeld is an individual, attorney at law, and was Defendant-Respondent.

There are no publicly held corporations involved in this proceeding.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Jahanshahi v. Rosenfeld*, Superior Court of California for County of Los Angeles, No. 19STCV40091
- *Jahanshahi v. Rosenfeld*, California Court Appeal, Second Appellate District, Division 3, No. B304076
- *Jahanshahi v. Rosenfeld*, Supreme Court of California, No. S27405

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PETITION FOR A WRIT OF CERTIORARI

Shahrouz Jahanshahi respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of California in and for the County of Los Angeles.

OPINIONS BELOW

The opinion of the California Court of Appeal, Second Appellate District, Division Three, is provided as App. 1.

The judgment and ruling of the Superior Court of California in and for the County of Los Angeles is provided as App. 22 and App. 31.

The opinion of the Supreme Court of California as App. 32 (en banc).

STATEMENT OF JURISDICTION

The date on which the Supreme Court of California decided or denied the case was on May 18, 2022. App. 32.

On July 19, 2022, petitioner filed for an extension with Court under application number 22A78. On July 29, 2022, the Court granted extension for the petition for writ of certiorari to be filed by October 15, 2022.

The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution Amendment V in relevant part provides:

nor be deprived of life, liberty, or property, without due process of law;

United States Constitution Amendment XIV, § 1:

nor shall any State deprive any person of life, liberty, or property, without due process of law;

California Constitution Article 1, § 1 states:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

California Constitution Article 1, § 26 states:

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

California Constitution Article VI, § 2 states:

The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment.

An acting Chief Justice shall perform all functions of the Chief Justice when the Chief Justice is absent or unable to act. The Chief Justice or, if the Chief Justice fails to do so, the court shall select an associate justice as acting Chief Justice.

California Constitution Article VI, § 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.

An acting presiding justice shall perform all functions of the presiding justice when the presiding justice is absent or unable to act. The presiding justice or, if the presiding justice fails to do so, the Chief Justice shall select

an associate justice of that division as acting presiding justice.

California Code of Civil Procedure, § 425.16 states:

(a) The Legislature finds and declares that there has been a disturbing increase in law-suits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she

will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to § 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to §§ 6529, 11130, 1130.3, 54960, 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of § 6259, §1130.5 or 54960.5, of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the

Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of

motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under § 904.1.

(j)(1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

California Business and Profession Code § 6068 states:

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
- (2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
- (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.
- (i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.
- (j) To comply with the requirements of § 6002.1.

- (k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.
- (l) To keep all agreements made in lieu of disciplinary prosecution with the State Bar.
- (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.
- (n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.
- (o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:
 - (1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.
 - (2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.
 - (3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary

sanctions of less than one thousand dollars (\$1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct

complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

California Government Code § 69508(a) states:

(a) The judges of each Superior Court having three or more judges, shall choose from their own number a presiding judge who serves as such at their pleasure. Subject to the rules of the Judicial Council, the presiding judge shall distribute the business of the court among the judges, and prescribe the order of business.

(b) Notwithstanding subdivision (a), the Judicial Council may provide by rule of court for the qualifications of the presiding judge.

INTRODUCTION

Petitioner is respectfully requesting Court to grant this petition by reversing the judgment of the Superior Court of California that is not made in conformity of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of California to clear the ambiguity in the State law,

uniformity of decision and to avoid miscarriage of justice and in furtherance of justice. App. 22-31.

Petitioner filed a timely appeal with the California Court of Appeal. On February 8, 2022, the court of appeal held an oral argument on the appeal where one of the justices that has signed the opinion did not participate in the oral argument. The California Court of Appeal affirmed the judgment of the court. App. 1-21.

Petitioner filed a timely petition with the Supreme Court of California, where it also summarily denied the petition. App. 32.

Thereafter, Petitioner filed an application with this Court for an extension of time to file Petition for Certiorari which was granted.

STATEMENT OF THE CASE

A. Background

Petitioner brought a civil action consisting of 14 causes of actions against Respondent who is an attorney at law and represented his parents in a Landlord-Tenant dispute for abuse of process,¹ violation of Civil Rights, BANE ACT, RALPHS ACT, Violation of Privacy,

¹ Judge Norman Tarle in denying Respondent's motion for attorneys' fees in the Landlord-Tenant action stated on the record: "The decision to file this matter as a limited jurisdiction was ill-considered."

in the Superior Court of California in and for the County of Los Angeles.

B. Proceedings Before the Superior Court

Respondent resorted to seek assistance from his friend Gerald Singleton who is an attorney at law. Gary LoCurto from Singleton law firm purportedly was attorney of the record, and filed a falsified declaration under penalty of perjury to extend the date to respond to the complaint, and ultimately filed a motion to strike under California anti-SLAPP statute to dismiss the contending that all 14 causes of action were protected activity within the meaning of the statute, and *misled* the court by misquoting over 15 cited authorities by changing words and phrases of the cited authorities to win at all cost in violation of the California Business and Profession Code § 6068, and California Rules of Professional Conduct, rule 3.3.

The court granted Respondent's anti-SLAPP motion and awarded attorney's fees and costs to Respondent. App. 22-31. Following the ruling, the court transferred the matter to another department within the court. This transfer was done in excess of jurisdiction of the court as under the California law and the Local Rules of court this authority is solely vested within the Presiding Judge or supervising judge of the court. California Government Code § 69508(a), California Rules of Court, rule 10.603(b)(1)(B).

The court in granting Respondent's ant-SLAPP motion and transferring the matter to another department of the court has exceeded its jurisdiction in that the court erred in granting Respondent's Anti-SLAPP motion as (1) Anti-SLAPP motion does not apply to landlord-tenant actions arising from breach of the contract, and where the litigants are private parties and not a public figure, nor the attorney representing his parents in the underlying action was a public figure, (2) the Anti-SLAPP motion does not protect the conducts arising from criminal activity nor malice, (3) the court erred, abused its discretion and disregarded multiple instances of procedural errors, ghostwriting, artifice facts and evidence presented by two members of the bar, Respondent and his attorney of record Gary LoCurto, (4) bias and prejudice toward a *pro se* litigant, and (5) abusing discretion and exceeding its jurisdiction, ministerial duty by denying the motion for OSC re Contempt, where the court disregarded overwhelming, undisputed evidence, supported by the records, and solely relied on judge Rico's decision who had not even considered misconducts of the Respondent and his attorney of record.

I. Ghostwriting

Respondent allegedly retained the law firm of Gerald Singleton to represent him.² During the course

² Respondent had worked for Singleton as a contracted lawyer and have established friendship. Through the proceedings the name of the firm has changed multiple times and it is now Singleton Schreiber, LLP.

of litigation and up to the petition for review before the Supreme Court of California, Respondent was represented by 4 different attorneys from the same law firm and 3 of them have filed falsified declarations under penalty of perjury, and other pleadings before the court and court of appeal.

II. Candor Toward Tribunal

California Business and Profession Code § 6068, California Rules of Professional Conduct, rule 3.3, mandates and requires attorneys not to mislead the tribunal with “false statement of fact or law.” Respondent and his attorneys of record knowingly, intelligently, and willingly misled the court by misquoting 15 cited authorities in his anti-SLAPP motion by changing words and phrases of the cited authorities to mislead the court and receive the desired result of dismissing the action.³

C. The California Court of Appeal Decision

On February 8, 2022, Petitioner appeared for oral argument before the California Court of Appeal. The three panel of justices holding the oral argument were Presiding Justice Edmon, Associate Justice Lavin, and Associate Justice Egerton.

However, the opinion of the court is signed by Judge Veramontes whom did not participate at the oral hearing. Moreover, the rendered decision did not

³ Changing words and phrases “shall” to “may.”

consider the points raised on appeal that required *de novo* standard of review. Therefore, aforesaid decision is void as a matter of law based upon California Constitution Article 1, §§ 2, 3. See *Moles v. Regents of University of California* 32 Cal. 3d 867, 872-874 (1982).

REASONS FOR GRANTING THE PETITION

I. THE FEDERAL CIRCUITS ARE DIVIDED ON CALIFORNIA'S ANTI-SLAPP STATUTE AND WHETHER ILLEGAL ACTS ARE PROTECTED

This case is ripe for Supreme Court review because it involves a clear intra-circuit conflict regarding California's ant-SLAPP statute California Code of Civil Procedure section 425.16.

Even within the state there are so many *conflicting* decisions that requires the Court's intervention for uniformity of the decision and clear the quagmire the aforesaid statute has created as the language of the aforesaid statute is abused in applying to the matters that are not of the *public issue*, and at the same time the distinction as to its protection as to the causes of action that are *illegal* as a matter of law.

Respondent who is an active member of the State Bar of California abused the California Rules of Court by bombarding petitioner with unwanted emails serving pleadings despite the petitioner's written demand directed to respondent to cease and desist sending emails to petitioner. Federal Rules of Procedure, rule

5, prohibits electronic service without a *consent* of the party. On the same token, California Rules of Court, rule 2.251(c)(3)(B) also requires consent of a party for electronic service and it states in pertinent part as follows:

(B) The action includes parties or persons that are not required to file or serve documents electronically, including *self-represented parties* or other self-represented persons; those parties or other persons are to be served by non-electronic methods *unless they affirmatively consent to electronic service*. California Rules of Court, rule 2.251. (emphasis added).

See, “we find it significant that by law e-mails are insufficient to serve notices on counsel in an ongoing case without prior agreement and written confirmation.” *Lasalle v. Vogel*, 36 Cal. App. 5th 127, 138 (2019). Moreover, California Penal Code § 653m penalizes harassing and unwanted emails.

The Superior Court of California, and ultimately the Supreme Court of California failed to recognize the privacy rights of petitioner under *Griswold v. Connecticut*, 381 U.S. 479 (1965), and California Constitution Article 1, § 1, and the aforesaid statutes and rules by affirming the judgment of the Superior Court granting respondent’s motion for anti-SLAPP pursuant to California Code of Civil Procedure, § 425.16. App. 22, 1, 32.

The rendered decision is contradictory to holding of *Flatley* where the California Supreme Court stated illegal acts are not protected by anti-SLAPP statute.

“A defendant was precluded from using anti-SLAPP statute if underlying speech or petition activity was illegal as a matter of law; illegal activity privileged under litigation privilege was not necessarily protected by anti-SLAPP statute; and lawyer’s conduct was extortion as matter of law and thus not protected by anti-SLAPP statute.” *Flatley v. Mauro*, 39 Cal. 4th 299 (2006).

The *Nunez v. Lizza*, 12 F.4th 890 (8th Cir. 2021) discusses the constitutionality and the application of the anti-SLAPP statute to defamation articles published that addresses a matter of public interest which has affirmed in part, reversed in part and remanded to the court. Thus, this Court should grant this petition to clear the discrepancy and the confusion created by the aforesaid statute.

II. THE FEDERAL CIRCUITS ARE DIVIDED ON ATTORNEY GHOSTWRITING

This case is ripe for Supreme Court review because it involves a clear intra-circuit conflict regarding attorney ghostwriting.⁴ ⁵ See *Ricotta v. California*, 4

⁴ Respondent had 4 different attorneys from the same firm representing him, where in fact the pleadings were drafted by Respondent as ghostwriter with many falsified declarations consisting of who is an attorney of record throughout the case and the appeal.

⁵ The record reflects a letter from Gary LoCurto one of the purported attorney stating that he is not representing Respondent on appeal, whereas the Appeal Dockets and Record reflect him as attorney of record.

F. Supp. 2d 961 (S.D. Cal. 1998) (ghostwriting occurs when attorneys gather and anonymously present legal arguments, with the actual or constructive knowledge that the work will be presented in some similar form in a motion before the court).

Federal courts nearly unanimously condemn ghostwriting as being a form of misrepresentation to the court as well as a violation of Rule 11 and various ethics rules governing candor to the tribunal. Such disapproval stems largely from the belief that the practice of ghostwriting undermines and impedes the overall fairness of the judicial process. Rule 11 of the Federal Rules of Civil Procedure requires that “every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name—or by a party personally if the party is unrepresented.” Fed. R. Civ. Proc. 11. By affixing this signature to each document, the signer certifies that to the best of his or her knowledge the document is not being presented for an improper purpose, the claims presented are warranted by existing law, and the factual contentions have evidentiary support. Fed. R. Civ. Proc. 11(b)(1)-(3).

When a ghostwriter fails to sign a document that he or she has substantially authored, however, federal courts have expressed concern that the attorney thereby avoids the obligation of making the mandatory certifications to the court as required by Rule 11. See also *Duran v. Carris*, 238 F. 3d 1268, 1271-72 (10th Cir. 2001) (ghostwriting inappropriately shields attorney from responsibility and accountability).

When a party is able to obtain an unfair litigation advantage, the overall fairness of the legal system is jeopardized, a result which is against public policy. See Jeffrey P. Justman, Note, *Capturing the Ghost: Expanding Federal Rule of Civil Procedure 11 to Solve Procedural Concerns with Ghostwriting*, 92 MINN. L. REV. 1246, 1269 (2008).

Accordingly, to the extent that ghostwriting does indeed compromise the fairness of the legal system, such practice is contrary to public policy should not be permitted. See Halley Acklie Ostergard, *Unmasking the Ghost: Rectifying Ghostwriting and Limited-Scope Representation with the Ethical and Procedural Rules*, 92 NEB. L. REV. 655, 670 (2014); *United States v. National Treasury Emps. Union*, 513 U.S. 454, 482 (1995).

The California court rejected the facts and evidence of ghostwriting committed by Respondent such as caption of the pleading form requiring the name and address of the attorney of the record to be listed on the first page of pleading pursuant to California Rules of Court, rule 2.111(1), where the pleadings in the lower courts reflected an address in San Francisco, California, whereas the purported attorney of record's office was and is located in San Diego, California, reflecting a non-existent address for the attorney of the record.

The issue of ghostwriting is an important one on this petition for the Court to decide for the following reasons:

1. Under California anti-SLAPP statute prevailing party is entitled to attorneys' fees and costs. California Code of Civil Procedure § 425.16(c)(1).
2. However, a pro se litigant is not entitled to attorneys' fees. See *Trope v. Katz*, 11 Cal. 4th 274 (1995).
3. Considering these facts Respondent chose ghostwriting using his friend Gerald Singleton as attorney of the record, misquoted 15 cited authorities as discussed to mislead the court in granting anti-SLAPP motion and a judgment over \$27,000.00 for attorneys' fees.

III. WHETHER THE CALIFORNIA COURT OF APPEAL CAN RENDER OPINION WHERE ONE OF THE JUSTICES ON THE PANEL DID NOT ATTEND THE ORAL ARGUMENT?

On February 8, 2022, Petitioner attended the oral argument before the California Court of Appeal, Second Appellate District, Division Three. The panel consisted of Presiding Judge Edmon, Judge Lavin, and Judge Egerton.

Judge Viramontes was not present nor participated at the oral argument of the matter before the aforesaid court, however, the opinion of the court is signed by Judge Viramontes. App. 21.

The California Supreme Court has held that all of the judges or justices must attend the oral argument on appeal. "Thus, permitting a justice who has not heard oral argument to participate in the decision of a

case would effectively deny litigants their right to oral argument on appeal". *Moles v. Regents of University of California*, 32 Cal. 3d 867, 872-874 (1982), citing and discussing California Constitution Article VI, § 3, California Constitution Article VI, § 2. Furthermore, in *Katz* the state's highest court has held that: "[e]very constitutional provision is self-executing to this extent, that everything done in violation of it is void." *Katzberg v. Regents of Univ. of California*, 29 Cal. 4th 300, 307 (2002).

Petitioner raised these Constitutional issues before the Supreme Court of California, but it was denied (en banc). App. 32.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: October 12, 2022 Respectfully submitted by:

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