CASE # 22-6064

SUPREME COURT OF THE UNITED STATES

Laura Fettig,

Petitioner,

v.

Hilton Worldwide Inc., et al.
aka Hilton Garden Inns Mgt., LLC

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

1. Whether the court of appeals correctly held that a contract claim preempts a tort cause of action for recovery from the negligence of a federally registered commercial motor vehicle driver.

2. Whether the U.S. Supreme Court finding that the term "mistake" in the Federal Rule of Civil Procedure 60(b)(1) include a judge's errors of law can apply in a civil tort case involving a federally registered commercial vehicle.

3. Can a natural person be forced into a contract?
See. Alexander v. Bothsworth, 1915. "Party cannot be bound by contract that he has not made or authorized. Free consent is an indispensable element in making valid contracts."

LIST OF PARTIES

Petitioner is Laura Fettig, plaintiff in the superior court proceedings, and appellant in the proceedings before the Second Appellate District.

Respondent are Hilton Worldwide Inc., and Madison Brown, defendants in the superior court proceedings, and respondent in the proceedings before the Second Appellate District.

RELATED PROCEEDINGS

Fettig v. Hilton Worldwide, Inc., Madison Brown, Does 1 to 20, #BC596162. Sept. 29, 2015

Fettig v. Hilton Worldwide, Inc., et al, aka Hilton Garden Inns Mgt., LLC. Appellate Court B307348. May 4, 2022

Fettig v. Hilton Worldwide, Inc., aka Hilton Garden Inns Mgt., LLC. S275007 Aug. 10, 2022

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Research

Statutes and Rules

PETITION FOR WRIT OF CERTIORARI

Laura Fettig respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals for The State of California Second Appellate District.

OPINIONS BELOW

The opinion of the court of appeals (App.1a-7a) and is published. The orders of the superior court appear at App. 9a-24a and App. 25a-29a)

JURISDICITON

The judgment of the court of appeals was entered on May 4th, 2020. No petition for rehearing was filed in my case. Fettig's petition for review to the California Supreme Court was denied August 13, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

JUDICIAL NOTICE

Fettig asks the Court to take judicial notice of the fact she is without counsel, is not schooled in law and legal procedures, and is not licensed to practice law. Therefore her pleadings must be read and construed liberally. See Haines v. Kerner, 404 US at 520 (1980); Birl v. Estelle, 660 F.2d 592 (1981). Further Fettig believes this court has a responsibility and legal duty to protect any and all of Fettig's constitutional and statutory rights. See United States v. Lee, 106 US 196, 220 [1882]

STATUTORY PROVISIONS

In addition, to provisions set forth in the brief below, this case involves prayer for recovery of damages pursuant to California Civil Code §§ 3281, 3333, for negligence of Vehicle Code § 17150; discretionary relief of California Code of Civil Procedure §§ 473 and 664.6; Which when denied led to violation of rights pursuant to U.S. Const. Amend. 14, § 1. These statutes and the balance are reproduced in pertinent part in the appendix to this brief at (App. 30a)

STATEMENT

The mistaken focus of this published decision fails to consider the cause of action in tort, which must compensate for all damages which should legally take precedence over an alleged contract. The Petitioner's right to recovery in a tort action should remain protected whereas possibly the largest body of statutes constitutionally, nationally, federally and statewide were constructed for the protection of public in the transportation industry. Holding a contract claim precedent over a legal tort recovery as a legal mistake that this Court should overturn to protect the pubic. Where statutory classifications in a tort law cause of action are overlooked, interfering with the exercise of a fundamental right, constitutional scrutiny of state procedures is required.

The issue of protection is of such importance the United States, Federal, and State Licensing statutes require motor carriers to carry liability insurance for injuries or deaths

caused by negligent driving. See, 49 U.S.C. § 13906(a)(1); 49 C.F.R Section 387.303(b)(1); California Vehicle Code §§ 34630 & 34631.5; California Insurance Code Section 22 [insurance is a contract whereby one undertakes to compensate another against loss, damage, or liability]. Due to the importance of this issue, Justice.org; Publiccitizen.org and the American Bar Association have offered to consider submitting an amicus brief upon writ acceptance.

A common-law tort claim against the defense federally registered commercial carrier brought by a private party to compensate for damages, has the requisite connection to be protected by 49 U.S.C. 14501(c)(2)(A) and preserves the "safety regulatory authority of a State and provides a federal defense, but not federal jurisdiction. Lopez v. Amazon Logistics, Inc., (N.D. Tex. 2020). This Court has stated that "state" regulation can be ... effectively exerted through an award of damages.'" Kurns v. R.R. U.S. (2012). see also Desiano v. Warner- Lambert F (2006) ("Common law liability has formed the bedrock of state regulation."). "[T]he obligation to pay compensation... is designed to be, a potent method of governing conduct and controlling policy." Kurns, 565 U.S. at 637

It is the rule that where a case sounds both in contract and tort the plaintiff will ordinarily have freedom of election between an action of tort and one of contract. Eads v. Marks (1952). An exception is in suits for personal injury caused by negligence, where the tort character is considered to prevail. Huysman v. Kirsch, (1936); Civil Code, Section 3333, provides, "[t]ort damages are awarded to compensate a

plaintiff for all damages suffered as a legal result of the defendant's wrongful conduct." Comunale v. Traders & General (1958).

The decision below ignores statutory and regulatory provisions that should provide tort recovery with important implications in public safety, to prevail. The NHTSA, report that failure to yield the right-of-way when turning, where left turning vehicles pose the greater hazard, traveling at higher speed and is considered an egregious violation warranting a citation. (Maleenfant & Van Houten, 2011). Research indicates a lack of compliance with laws requiring a driver to yield to pedestrians at crosswalks causes many of the pedestrian motor vehicle crashes at intersections (Hunter, Stutts, Pein, & Chante, 1996). The U.S. DOT also proclaims this failure egregious, and that pedestrian safety efforts need to be repeated and incorporated into the operating culture of law enforcement agencies. California has a 25% higher injury rate than the nation and the Office of Traffic and Safety finds a 35% reduction in traffic collisions following citations and enforcement.

The trial and appellate courts fail to pursue restitutionary goals, not only to the petitioner, but to the public. People have tragic and fatal injuries all the time where tort actions result in remedies to protect the rest of the people, e.g. stop signs, invented to" introduce the idea that you had to watch out for others" and traffic lights, to increase road traffic safety. Court recognition of the harm the defense caused is important in preventing this from happening to someone else. What was taken from the

victim, will never come back. The court could not take the victims damages, "eye for an eye" from the driver, but asked her community to assess the value of her loss of health. This Court is asked to tell the judiciary, "NOT SO FAST" in dismissing a victims right's to property value, which sounds the alarm, "NOT SO FAST" to negligent drivers.

FACTS AND PROCEEDINGS

Petitioner, Laura Fettig was a pedestrian sustaining catastrophic injuries after being struck down and knocked unconscious by defendant Madison Brown driving a Hilton commercial vehicle, who while making a left turn, failed to yield. Brown admitted to her and a trained investigative officer he hit her after failing to yield. The Officer's sworn testimony, police report and 911 call verify material facts. (App. 42-46a.). Petitioner sued for damages for catastrophic injuries that resulted and the defense changed their admission to denial.

In Sum, petitioner was injured by a negligent party; the defense knew her attorney failed to submit any evidence and the pre-trial and trial courts failed to allow evidence submission upon requested to continue the trial; the judge effectuated a settlement based on her having no evidence, yet when she could not answer, the court asked her attorney to agree to terms. She moved the next day to set aside agreement terms negotiated in court, that three parties did not agree too and was denied.

To start, the pre-trail Court made a CCP 598 ruling favorable to petitioner, finding, "Lack of liability not established; plaintiff without evidence of trauma not supported by defense argument of 34 day trial damage phase; If minimal injuries, testimony of 92 witnesses is unlikely." (App. 47a)

The defense filed two Non-Participation Motions against plaintiff attorney (Gross) for not filing pre-trial documents and Gross's Cal. Rules of Court (CRC) 3.1332 request for continuance for time to present evidence for a hearing on merits was denied. The pre-trial Court warns of sanctions, yet sends him to trial when still not in compliance. At trial day one, the court orders, Court and counsel confer regarding witness list; parties to confer about medical bills; Gross to prepare CACIs for measure of damages; and, the Court read the defense MIL#2, "Plaintiff has incurred an exorbitant amount of medical expenses. Plaintiff will be allowed to collect a windfall for the full amount of expenses billed.

The trial begins with petitioner having no knowledge her evidence was not provided. After Gross failed to secure her expert qualified physician to testify, he requested a Rule 3.1332 continuance and was denied. The Court asks the defense to print the Local Rules regarding joint witness lists and admonished him for not preparing. The defense moves for non-suit and Gross admits further negligence. The Court states that with no evidence, plaintiff cannot make a claim for medical expenses or injuries and he doesn't know how to

get anything else in front of the jury. (App. 51a). The Court intimates a settlement instead of time to provide evidence.

Lunch is taken, with Gross agreeing plaintiff will re-take the stand to offer billing and medical records. Returning to Court, Gross informs her of an offer and now states she cannot re-take the stand or present any evidence and she must settle. Gross announces a settlement. The Court responds, "...it is problematic not having a resolution in writing and... attorneys cannot stipulate terms of settlement on the record, the client has to. If I allow this, it wouldn't be binding on Hilton. ...if Hilton doesn't give something in writing, then plaintiff would have some kind of remedy." "For something to be enforceable under 664.6, it has to be in agreement of the parties." (App 49-51a)). He asks for the terms to be read then asks, "Ms. Fettig, do you agree to those terms?" Fettig replies, "I feel bound by not being prepared. I'm horribly upset because of future needs." Failing to assent 18 more times, she states "will I really have my day in court" and "we are not prepared" The court calls her protests, footnotes and asterisks, (omitted and less important).

With the jury waiting, the Court rules on nonsuit motion, stating, "There is enough liability, although wafer thin. She was in a crosswalk. She got close to the middle. The bus turned left across the crosswalk. She went unconscious, and the bus driver heard a thump." He states, "There's probably enough to send the issue of noneconomic damages related to the pain caused by getting hit by a bus to a jury." (App. 61). The court continues to effectuate settlement and asks,

"Apart from any perceived weakness in the evidence you provided, are you under duress? With her intention to apprise the jury of the extent of her damages, when she insisted Gross request she speak to the court (App.55) the court asks if she is capable of resolving this, which to her means to find a solution, and she answers yes. The Court mistakes her answer and states, "And the terms of the deal are— let's say them again." The defense reads "terms" and the Court asks, "and you agree to the form of that settlement, Mr. Gross?" Gross: "Yes, your Honor. (App 64) Petitioner did NOT agree to the terms as required by law. The Court advises a 664.6 settlement drafting to keep out non-agreed upon 'boilerplate' items, "but keep it simple because it will be enforceable that way. He states, "I like to set OSC's far out enough..., but we need something in case it (settlement) doesn't get resolved." (App. 65)

Petitioner applied for ex-parte relief to rescind, with two new attorneys, pursuant to CCP 473(b)'s standard of equity, attorney mistakes, lack of being represented by an attorney, deprivation of trial on merits, extrinsic mistake; and, Civil Code 1689, for consent "by mistake" or duress, fraud, or undue influence; and, §1636, noticing no mutual intention was formed and CCP 664.6 lack of non-ambiguous consent. The Court denied ex-parte relief and ordered her to file again and for "the defense to file motion to enforce agreement," improperly granting the defense CCP 664.6 relief.

Petitioner appealed her denial for relief and was denied as in the Published decision below which simply upholds the

trial court. The balance of proceeding details are contained in the appendix. (App. 1-7a)

The petitioner timely petitioned for review and was denied on August 13, 2022. (App 8)

REASONS FOR GRANTING THE PETITION

Where this tort claim against a commercial carrier is protected by 49 U.S.C. 14501(c)(2)(A) preserving the "safety regulatory authority of a State and a federal defense, This Court is asked to find that this tort claim be protected from the judge's legal errors pursuant to FRCP 60(b) (1) holding that the term "mistake" include a judge's errors of law, See, Kemp, 595 U.S. (2022), and pursuant to the constitutionally, nationally, federally and statewide laws.

The inequitable settlement for negligence was imposed on petitioner following court denial of three requests to submit the province of her evidence and witnesses, where proof would have rested on the jury to decide proper recovery. After not allowing time to admit evidence, the court failed to allow proper remedy, which is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. "It is plain that where the burden of proof lies may be decisive of the outcome," Speiser v. Randall, 357 U.S. "...and It is an opportunity which must be granted at a meaningful time and in a meaningful manner." Armstrong v. Mango, U.S (1965) As in Armstrong, the trial court could have accorded this right to the petitioner by granting her motion to rescind

and consider the case anew. Only that would restore the petitioner to the position she would have occupied had due process of law been accorded first. Where the trial court admits petitioner's duress for her attorney failure to submit evidence and with well documented level of knowledge of the defense, but unknown to her, an injured party was "deprived of due process of law, leading to the destruction of fundamental rights of one of its citizens." U.S. Const. Amend. 14, § 1.

The denial is not based on precedent and controlling statutes, but based on general contract authority, Second of Contracts § 175 (2) and appellate decisions Leeper v. Beltrami (1959) and Chan v. Lund (2010). The decision fails to account for the standard of review of these authorities and to account for the statutory obligations of the defendants. It rejects petitioner's requests for relief and fails to consider public policy; the precise nature of the defendant's legal obligations; and trial court administrative standards in handling of a negligent plaintiff attorney who failed to submit her evidence.

The decision deepens the split of authorities among district courts that can be resolved only with this Court's intervention. Specifically, for rescission pursuant to CCP 473, one position of district courts require consideration of the merits of the claim and substantive law. Another position is comfortable with arbitrary and capricious decisions depriving injured parties of their rights by implicitly passing on the merits of the claim and holding procedures as precedent. By joining this latter position, the

Decision below puts itself at odds with the language of the statute of Section 473. For rescission pursuant to CCP 664.6, where some overlook the strict summary procedure of the statute, the majority hold the parties should be equally protected and settlement cannot be enforced if it is illegal, contrary to public policy, unjust or ambiguous. The Decision below fails to follow the legal requirement of the summary procedure of CCP 664.6 to determine the validity of the "alleged" settlement allowing a transcribed statement without all parties consent to pass as a legal contract also fails precedent tort remedy.

This Court can resolve both issues. It must hold a tort action precedent and find the mistakes of the courts can find relief for those injured in a tort action. This court should affirm that rescission should have been allowed pursuant to CCP 473 when the court failed to perform proper review, and pursuant to CCP 664.6, full recovery of damages should not be lost, with nothing signed. In other words, by holding a tort as precedent, it is the merits of the case equity that must be held accounted for and where mistakes of the judiciary deny the right of such recovery, the improper rulings should be overturned.

I. The Decision below fails to uphold The United States legal doctrine of Procedural Due Process that requires courts to follow fair procedures before depriving a person of life, liberty, or property.

A. The Court Cannot Deprive Parties Rights Without Meeting the Requirement of Counsel Participation.

This Court holds, "A State tort claim is 'species of property' protected by the Due Process Clause... protecting against arbitrary deprivation of "property", or benefits." Martinez v. California, U.S. (1980). Due Process requirements include "...a hearing before an impartial tribunal; an opportunity for confrontation and cross-examination; a decision be based on the record; and, that a party be represented by counsel." Fuentes v. Shevin, U.S. (1972). "Parties whose rights are to be affected are entitled to be heard." Baldwin v. Hale, U.S. (1863); Mathews v. Eldridge, U.S. (1976). "The hearing ...must be "meaningful," Armstrong, supra, and "appropriate to the nature of the case." Mullane v. Central Hanover Bank, U.S. (1950) It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision does not meet these standards and cannot be upheld. Martinez, supra.

Petitioner's relief request for 'attorney' non-participation was denied. "Very early on, courts decided the failure of counsel to meet a procedural deadline was proper cause for section 473 relief." Lee v. Wells Fargo (2001); In Estate of Simmons (1914). "Allegations that the attorney negligently failed to pursue litigation... and that damages exceeding the settlement could have been recovered were adequate to satisfy the pleading requirements for rescission. The Swahn Group v. Segal, (2010) "An attorney may not ... stipulate that only nominal damages may be awarded." Blanton v. Womancare (1985). "Whenever it appears that an attorney entered into an agreement in direct opposition to instruction

of the client, there is no ground for such presumption." (Knowlton v. MacKenzie (1895); Linsk v. Linsk, (1969). "...equitable considerations have played a role in some of the decisions. Burns v. McCain, (1930). In this case, as we observe, equitable considerations support the plaintiff's position. Blanton, Id. [An attorney] "may not compromise his clients claim." Bice v. Stevens (1958), "or stipulate that only nominal damages may be awarded." Price v. McComish (1937).

The dichotomy in the present case relates to whether the attorney who has relinquished a substantial right of his client should have been allowed to enter into a stipulation on her behalf, without proper review of the court. If counsel abdicates a substantial right of the client contrary to express instructions, he exceeds his authority. "The law as to substantive rights of a client was clearly stated in Knowlton v. Mackenzie (1895): "... when the adverse party, as well as the court, is aware that the attorney is acting in direct opposition to his client's instructions or wishes, the reason of the rule ceases, and the court ought not to act upon the stipulation, nor can the adverse party claim the right to enforce a judgment rendered by reason thereof." Blanton v. Womancare (1985).

In U.S. v. Throckmorton, US (1878): "The cases where such relief has been granted are those in which, by fraud or deception practiced on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject matter of the suit. By reason of something done...

there was in fact no adversary trial or decision of the issue in the case...and the unsuccessful party has been prevented from exhibiting fully his case (P. 98 U. S. 66), or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat, or where the attorney regularly employed corruptly sells out his client's interest to the other side -- these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree and open the case for a new and a fair hearing."

B. Due Process Requiring an Impartial Tribunal, Cannot Involve Overlooking the Inherent Contract in Tort and Duty.

The California Supreme Court held that every insurance contract was not imposed by consent, but by law. "Therefore, the damages were not limited by the parties' consent, but governed by law, allowing tort remedies." Crisci v. Security Ins. Co., (1967) "Such failure [of defendant to yield right of way to plaintiff constitutes a violation of the statute and negligence as a matter of law in the absence of reasonable explanation" Schmitt v. Henderson (1969); Veh. Code 21950; CACI 710.

The defense becomes a fiduciary due to obtaining an advantage of improving their position in not providing full damages due to their negligence. In re Marriage of Lange (2002). "The fiduciary must stand unimpeached of any abuse or knowledge that plaintiff was not denied her day in court." The defense must show the transaction was just and fully

understood by the party from whom the advent was obtained.In re Estate of Cover (1922).

This Court finds," In personal injury action, under governing California law, a finalized settlement agreement is contingent on a judicial determination that the settlement was reached in good faith." Alvarez v. Bridgestone/Firestone, Inc. 2003 U.S. Several rulings underscore the equitable objectives of those statues the Legislature have enacted to provide that settlements are equitable. "[The injured] should be permitted to demonstrate the settlement is so far "out of the ballpark" to be inconsistent with the[se] objectives." Tech-Bilt, Inc. v. Woodward I(1985). "Despite the uncertainties, generalized valuation criteria are recognized by the personal injury bar, insurance claims departments and pretrial settlement courts. Ibid. Petitioner pleaded her over $220,000 economic loss to show the settlement was not made in good faith, which the courts completely overlooked.

A court can refuse the best of contracts if unconscionable. Cal. Civ. Code 1670.5; Armendariz v. Foundation (2000); "Unconscionability is recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other." A & M Produce Co. v. FMC Corp., (1982) 486.

In Koehrer, 181 Cal.App. (1986), The appellate court equated bad faith breach to denial of liability as well as denial of the existence of the tort contract, stating that the differences were virtually indiscernible. In Royal Globe v.

Sup. Ct., (1979), "an insurer may be liable to third party for violating any of the thirteen unfair claims settlement practices in Cal. Ins. Code § 790.03 (h)(5): Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear and (h)(7): "Attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he or she was entitled..." The defense had Fettig's bill totals in their trial notebook as Exhibits 107 and 114, totaling $234,978.66.

"Insurance contracts are necessarily affected with a public interest," Gray v. Zurich Ins. Co., (1966)] has led courts to impose on insurance carriers an implied in law duty to deal in good faith. Comunale supra; A tort action... redresses the breach of the general duty to society which the law imposes without regard to the substance of the contractual obligation." Careau Co. v. Security Pacific (1990).

This Court, in Goldberg v. Kelly, 397 U. S., at 261 stands with the Federal Court Protection finding that, "California's interest in protecting a party from the possibility of unjust compensation from a resulting tort is not a justification for denying the process due its citizens. Nor is additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process."

For the decision to stand would immunize commercial drivers from potential liability for negligence. "We conclude such an exception is not "clearly supported by public policy. The overall policy of preventing future harm is ordinarily served, in tort law, by imposing the costs of negligent conduct upon those responsible." Cabral v. Ralphs Grocery Co., (2011)

C. Due process requires a proper hearing at trial and a proper standard of review upon appeal.

"Denial of the non-suit determined there is substantial evidence to support a judgment in plaintiff's favor." Dina v. People ex rel. Dept. of Trans. (2007). "If the defendant makes a prima facie showing, the plaintiff may avoid judgment by requesting leave to reopen the case-in-chief and making an offer of proof as to how the defects can be cured. R&B Auto v. Farmers (2006). "A judge is... needing to be efficient, ... while needing, on the other hand, to give the parties their day in court and let the jury weigh the evidence. While it may be tempting to look at a case in the macro sense, the devil is in the details. The moving party's concerns... can be addressed by limiting instructions, without taking away the other party's hallowed right to a jury trial. Bahl v. Bank of America (2001); R & B, supra, at 333. The court's offer, in this case, to limit instructions to the jury to exclude petitioner's economic damages, where the court denied her attorney time to present them, does not meet her constitutional rights to full recovery of property she is entitled to.

"This Court has not hesitated to find proceedings violative of due process where a party has been deprived of a well-established common-law protection against arbitrary and inaccurate adjudication." Honda Motor Co. v. Oberg, 512 U.S. 415 (1994). "Procedural Due Process requires proper judicial review of actual damages for both economic and non-economic losses." Ibid. Traditional common-law procedures were not followed in petitioner's case. "Arbitrary power, enforcing its edicts to the injury of persons and property, is not law... and limitations imposed by constitutional law upon the action of the state are essential to the preservation of public and private rights and to be closely scrutinized when the question of essential justice is raised. Hurtado v. California, U.S. (1884). "The due process clause limits deprivation of rights where a standard of proof is too lax to make a reasonable assurance of fact-finding, Western & Atlantic RR U.S. (1929).

This Court is asked to take judicial notice of Qaadir v.Figueroa (2021) to illustrate that the decision below is incorrectly decided; without proper review; and, in direct conflict with another Court of Appeal decision. Justices Ohta, Wiley and Grimes in Qaadir, hold a complete opposite position than in petitioner's case, also decided by Wiley and Grimes. The Qaadir Courts proper standard of review, concluded "that for a plaintiff, such as an injured party, evidence of a medical bill is relevant to the determine damages.... and comports with California's statutory scheme for economic damages awards since the measure of damages recoverable in tort is "the amount which will compensate for all the detriment proximately caused." (Civ. Code, § 3333).

The justices state, "In considering...damages...the appellate court must determine every conflict in the evidence in the injured parties favor and must give him the benefit of every inference reasonable to be drawn from the record." Qaadir, supra.

The Qaadir Court reviewed evidentiary rulings for abuse of discretion finding (p.33) prejudicial error where a trial court denied plaintiff request for continuance to allow time for a medical witness to testify to plaintiff's injuries, resulting in a case dismissal. The appellate court reversed, holding "there were other less drastic and more appropriate means to redress the situation and the trial court's refusal to trail the case for a few days was an abuse of discretion" Jurado v. Toys "R" Us, Inc. (1993).

The Qaadir Court considered CRC, Rule 3.1332(c)(d) to determine the length of continuance requested; availability of alternative means to address problem; and, whether justice is served by a continuance. Where the petitioner received no such consideration, although it is reasonably probable that a result more favorable to the appellant would have been reached absent the evidentiary error, as in Qaadir. Where Qaadir was awarded $532,000 with evidence of paid medical bills totaling $5,137.24 (p. 22), petitioner should have been able to offer her billing. Her evidence contained in the defense trial book show billing of over $220,000 was ignored.

Petitioners should have received the same considerations as in Qaadir. A proper appellate review would find that trial

court procedures failed to procure petitioner's core evidence by failing to ensure all parties were prepared and have a fair opportunity to present evidence pursuant to The Standard of Judicial Administration 2.20(a) and CCP 575.2. "If a party fails to comply with local court rules because of actions of its attorney, sanctions for noncompliance must be imposed against the attorney, not the client". (CCP 575.2) In State of Cal.Public Works Bd. v. Bragg (1986). "Because §575.2(b) directs that 'any penalty' be imposed on counsel, not client, any dismissal without consideration of whether counsel or the client is at fault is not a sanction 'authorized by law'." Garcia v. McCutchen (1997). Federal courts have applied appropriate statutes on appeal even when not called to the attention of the trial court (Huntress v. Huntress' Estate (1956); Smith Engineering Co. v. Rice (1938), as, "the language of the statute indicates a broader purpose than mere pretrial conferences as it reads, "expedite and facilitate the business of the court" and "provide for the supervision and judicial management of actions from the date they are filed." (§575.1.) Ibid.

D. Petitioner was deprived of her Constitutional right to a jury trial.

With the primary remedy in tort being a recovery of the full amount of damages, the court should have focused on a proper and full presentation being made to the jury, who the petitioner contracted with payment. A jury of peers may be better tasked to keep the court process balanced in an ethical sense of public good.

II. This Court's Intervention is Warranted to Correct the Judicial Legal Errors that Prevented a Tort Case From Proper Remedy.

The decision is at odds with the legal principle "where there is a legal right, there is also a legal remedy," Marbury v. Madison, 5 U.S. 137, 163 (1803). "If judges could not fairly compensate plaintiffs after their legal rights were violated, the country would cease to be "a government of laws" and would become one "of men." "The individual's right to go to court to redress violations of personal rights was "the very essence of civil liberty" and necessary to ensure the Constitution's promise of a "government of laws, and not of men." Id. at 163. "In awarding an injured party an inadequate amount to cover damages, it failed to question the actual amount of economic and non-economic damages sustained, denying her due process in violation of the Fourteenth Amendment." Western & Atlantic, Supra

A. CCP 473 Requires a Determination on Merits And Weighed with Consideration of Finality that Should not Depriving a Legal Tort Recovery.

In Leeper, supra, rescission was affirmed due to the duress of a third party, pursuant to Civ. Code §1689. As in petitioner's case, "Scheidel had knowledge of [plaintiff's] predicament sufficient to give the right of rescission." "He took advantage of plaintiff by giving less than value of worth because he knew she was under duress" and same as relating to fraud, 'Abbie's basic right is to rescind based on

Scheidel's fraud. In such cases, the law "looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." Reed v. Williamson (1960); Austin v. Los Angeles USD, (2016).

Actual fraud committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, includes the suppression of that which is true, by one having knowledge of the fact. Civil Code § 1572. It is embraced within the provisions of section 1575 of the Civil Code and is denominated "undue influence." Such reason for relieving a party of his apparent contract may be found where one takes "an unfair advantage of another's weakness of mind" or "a grossly oppressive and unfair advantage of another's necessities or distress." Carr v. Sacramento Clay (1917)

Petitioner announced rescission the next day, the defense should have consented and proceeded to trial, however, the next day they prepared Notice of OSC Re: Dismissal (CT 74), indicating pursuant to CRC 3.1312 the defendants as the prevailing party. Good faith was also missing when the trial court continued the ex-parte motion to rescind ordering the defense to motion to enforce for the same hearing. (CT 76)

In Gondeck v. Pan American, 382 U.S. 25 (1965), this Court found, "relief from judgment should be granted in a manner that conflicts least with the goals served by finality. Broadly stated, justice requires that individuals receive similar treatment from the courts." US v. Ohio Power Co., U.S. (1957). Consistency is also an aspect of the finality of

judgments. We see every avenue of relief considered in Qaadir, with the appellate inconsistently failing the standard in petitioner's case.

"Rule 60(b) of the FRCP (28 U.S.C.), permits a court to relieve a party from a final judgment by motion for "(1) mistake, inadvertence, surprise, or excusable neglect; [or] (3) fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. If such neglect results in an unjust judgment, without a fair adversary hearing, the basis for equitable relief is present, and is often called 'extrinsic mistake.'" In re Marriage of Baltin (1989).

"The general underlying purpose of section 473(b) is to promote the determination of actions on their merits." (Even Zohar Inc. v. Bellaire (2015); "[T]he provisions...are to be liberally construed and sound policy favors the determination of actions on their merits." Austin, Supra. (See Sole Energy Co. v. Petrominerals Corp. (2005) Upholding a motion to vacate as motion for new trial on damages, the trial court determined the relief being requested." "The law is not a mere game of words.' [Citation.]. The plaintiff, here, was not simply asking the court to reconsider its prior ruling but rather to set aside the judgment and order to provide her proper tort remedy. Where "[e]ven after a voluntary dismissal with prejudice, the trial court has jurisdiction to vacate the judgment of dismissal under Section 473 discretionary relief, where it has been entered as a result of the plaintiff's 'mistake, inadvertence, surprise, or excusable neglect." Zamora v. Clayborn Contracting Group, Inc.

This Court found in, U.S. Trust Co. of NY v. NJ 431 U.S. (1977), "Impairment of a remedy was held to be unconstitutional if it effectively reduced the value of substantive contract rights. The refusal to set aside the perfunctory "alleged" settlement should be seen as a serious disruption of not only the injured party with damages far in excess of the enumerated losses as stated in her complaint, but of the expectations of the contractual obligation of California and Constitutional laws. In Hossain v. Hossain (2007) the trial court refused 473(b) motion to set aside enforcing settlement and appealed. Appellate court figured the "just" award amounts and ordered payment accordingly.

The Decision below "lapses from an order that did not determine the case on the merits, pursuant to Cal. Const., art. VI, § 14 which "is designed to insure that the reviewing court gives careful consideration to the case and that the statement of reasons indicates that appellant's contentions have been reviewed and consciously, as distinguished from inadvertently, rejected." People v. Rojas (1981). The Decision below should have concluded that without the tally of her medical bills the opinion of an inequitable settlement resulted in a miscarriage of justice. Cal. Const., art. VI, § 13.

B. The Decision below ignores the summary procedure requirements of CCP 664.6, a signed writing and a summary judgment

1. There was no signed document or consent of three litigants at the hasty and improvident court effectuated settlement negotiation.

The California Supreme Court found, A party's signature fails to convey such knowledge and consent unless it is contained in a document that was clearly intended by that party to be a binding settlement agreement. A party who wishes to invoke the summary procedure of section 664.6 to enforce a written settlement must strictly comply with the signature requirement of that section. See Levy v. Superior Court (1995).

As in Datatronic Systems v. Speron, (1986), the appellate court reversed finding, "an oral stipulation made before the court must be just that: a statement made on the record at a judicially supervised proceeding." As in this case, where the petitioner relied on the Court's statements "something has to be in writing (App.54-55). As in Sully-Miller v. Gledson, (2002), "The case found only contemplation of a signature." In Harris v. Rudin (1999) the defendant's two parties to the claim did not sign and enforcement reversed. These Courts instill the importance the "parties" signature on a document to indicate their clear intention to be bound and that "basic principles of contract law dictate that a party cannot be bound by a promise given without consideration. The court lacked authority under summary procedure to enforce any settlement, with neither an oral or written settlement signed by all the parties, and reverse." Critzer v. Enos (2010).

In Robertson v. Chen, (1996), the trial court was overturned for erroneously enforcing an offer as a settlement because (1) there was no writing signed by the parties and (2) the alleged agreement could not otherwise be summarily enforced because a triable issue existed regarding whether an agreement was formed. Since settlement so directly affects the party's "substantial rights," it was considered to be a serious step that requires the party's knowledge and express consent as indicated by the "parties" signature' (Levy at p. 584.)

Johnson v. Dept. of Corrections (1995), extended Levy v. Superior Court to oral settlements, holding that counsel agreement for parties in open court are not enforceable, as plaintiff never personally informed the court he accepted terms. Id at 1708. "The fact plaintiff participated in negotiations that led to a settlement did not constitute the type of direct participation contemplated by Levy. The litigant must personally acknowledge the settlement to the court." (Id. at p. 1709). Likewise, the petitioner did not personally agree to terms, her attorney did, nor did she recite in acknowledgement.

"A signature is not a 'thing', but a process. The process produces sufficient evidence that a person has adopted a document as his own. This process shows the identity of the performing the process; attributes the personal involvement of the person performing the process; and ties the person performing the process with the contract/document on which the process is being performed. What is a Signature. Patel

2. The Decision below fails to provide the summary procedure the Legislature intended in section 664.6 to enforce a settlement agreement.

This Court found in Stolt-Nielsen, 559 U.S. 682, that in a contractural settlement, the "intentions" of the parties are "controlling," defining 'intentions' as the set of considerations governing the interpretation...of 'any... contract," at 682, per Cal. Civ. Code §1636, which "must be ascertainable and lawful. Most jurisdictions assess contractual intent on objective measures, in the reasonable meaning of the words and acts of the parties, and, the conventional approach holds "intent is to be inferred, solely from the written provisions of the contract," following Ca. Civ. Code § 1638.
The Stolt discussion of "a contract of adhesion—one offered on a take-it-or-leave-it basis with no opportunity for the weaker party to negotiate—is at issue, "ambiguities will be subject to stricter construction against the party with the stronger bargaining power." Victoria, 710 P.2d at 742; accord, Sandquist, 376 P.3d at 514.

Courts cannot force parties to settle when they have not entered a binding agreement to do so. Basic principles of contract law dictate that a party cannot be bound by a promise given without consideration. Moreover, a party who wishes to invoke the summary procedure of section 664.6 to enforce a written settlement must strictly comply with the signature requirement of that section. Sully-Miller, supra. Agreement should not be enforced and could not be summarily enforced because a triable issue existed regarding

whether an agreement had been formed, so trial court reversed the motion to enforce. Harris v Rudin, supra.

The trial court arbitrarily combined the defense motion to enforce section 644.6 with petitioner's relief motion, where a proper summary adjudication would find petitioner pleading medical bills greatly exceeding the amount offered. The proper summary review In Chan v. Lund, supra, finds the parties discussed equity over six months, where petitioner's equity was not even accounted for and dismissed in a couple of hours. The decision fails to find that equity issues prevail over common law and tort law over contract. Secondly, in the merits of the case, Justices found that Chan's value received was adequate, he signed for and deposited value of $46,100 and future negligence to his cypress trees, would allow a new tort recourse. "In not effectuating the Common-law method of assessing damages, the court violated the procedural due process. Only meaningful and adequate review by the trial court can result in the strong presumption of validity of an award number. Honda Motor Co., supra.

The defense 664.6 motion presented to the trial court was a failed contract formation and offered no meeting of the minds on the material terms. Basic contract law provides that with no meeting of the minds or writing signed by the parties contains the material terms, there is no contract. Weddington Productions, Inc. v. Flick (1998).

A majority of authorities hold that 664.6 enforcement require there be no triable issue of fact or reasonable

dispute. City of Fresno v. Maroot (1987) provides a proper assessment of issues: 1. Will a party loose valuable rights with an agreement not fully understood, carefully considered, or not agreeable to? 2. Did it seem under the weight of pressure to settle, an indication of assent was given to terms not comprehending or appreciating their consequences. 3. Would there be a possibility of a new round of litigation about the meaning or enforceability of the settlement agreement, against public interest? Petitioner answered in the affirmative on each count and deserves proper assessment to obtain the right to recovery of damages while under undue pressure. As In Dairy Queen, Inc. v. Wood, (1962), There are three groups of respondents in this case: The district judge, who is formally a respondent by reason of the procedural posture of the case; Fettig's attorney who chose to protect his own interests over Fettig's, and, The Hilton who expended ten's, if not hundreds of thousands of dollars denying her due rights. This would put pressure on most.

III. This Court's Intervention Is Necessary to Protect the Rights of those injured from judicial errors.

Petitioner has legally protected rights, unduly lost through judicial action. The appellate court did not resolve the factual disputes involved or remand for further proceedings to the trial court to address the issues of Local Rule and other legal procedural failings; the defense scheme to pass bad faith; and a faulty settlement enforcement. Instead the appellate mistakenly found that "the court's

discretion was sound and with no mention of why the court was biased, the issue is waived." With bias meaning against one with a bad effect, such bias is found with judicial errors that leave a seriously injured citizen without proper tort remedy.

The trial court Order for plaintiff motion to rescind and defense motion to enforce, is itself unlawful. It states defense was ordered to prepare a proposed judgment, yet was signed by the judge on the same day as the hearing. (App. 9,23a.b) Contrary to California Rules of Court, Rule 5.125, plaintiff was not presented with the proposed order. This rule validly having the same legal effect as statutory law. "The prevailing party, should be strictly confined to a paper complying with the statute by containing the truth regarding each material issue and the legal results. The judicial duty should always be performed of testing the paper by the decision made, before making it an official document. Produce Pay, Inc. v. FVF Distribs.(US District Court). The juxtaposition of the defense as prevailing also validates plaintiff was without representation and as evidence of inequity against the meaning of a tort action. The Order, unlawfully granted then published in the decision below are a restatement of the defense claims with no voice of the plaintiff being heard. Is the judiciary abandoning the law and allowing the negligent's well-paid defense to "run over" the injured's tort rights?

The trial court Order denying plaintiff's request for reconsideration, is also unlawfully signed and filed on the same day of the hearing. The appellate upholds the false

claim that plaintiff did not provide explanation for failure to provide evidence of new facts and "this failure is fatal to her motion" and "her new facts weren't new only tardy." A proper review would find, in her moving paper, pursuant to CCP 1008, new evidence is submitted to support a rescission. Two treating and one QME treating physician found that her cognitive impairment and mTBI prevented her from providing assent to the settlement, particularly while under pressure or duress, before the Court. App.66-68, 80). The merit of the physician testimony informing the Court they were aware she was struck by a bus (to show information relied on to make diagnosis (Evidence Code 1271); she suffered neuro-cognitive impairment ; suffered from TBI indicated by injuries, symptoms, brain imaging, and EEG results; "Fettig suffered brain stem injury and related epileptic seizure (CT 482, 490); her aphasia can affect concentration and attention span, resulting in cognitive impairment and difficulty concentrating and focusing (App. 67); Fettig treated for brain injury and suffered sleep apnea and problems related to TBI and post-traumatic distress which result in brain and cognitive impairment; and affect her cognitive function; ability to concentrate; memory and attention span" (App 80). Dr. Merman is a qualified expert and was scheduled to appear for Fettig at trial on Feb. 10th. The Court makes the arbitrary finding "the medical records attached do not establish that Fettig lacked capacity to enter into the settlement". (CT 501: 18-19). The controverted issue of this courts own medical opinion should not stand "without appropriate procedural safeguards that would prevent a statutorily created property interest and must be analyzed in constitutional terms." Vitek v. Jones, 445 U.S.

unequivocally in violation of facts and laws [ADA Title II] designed to protect the best interests of the public. See research at (App 40-41a)

"Judges are not left at large to decide cases in light of their personal and private notions;... it cannot be said that a Judge's responsibility to determine whether a right is basic and fundamental in this sense vests him with unrestricted personal discretion." Griswold at 493 w/FN7. "Judges lending support to suppressing factual information about dangers to public health or safety, the disclosure of which would be highly beneficial to the public, are not striving to enhance and maintain confidence in our legal system." Canon 2 of MCOJD, note 106, "Rather, they undercut confidence in our courts and our justice system by playing favorites and placing the private, pecuniary interests of the rich, powerful wrongdoer ahead of the interests of their victims. Courthouses exist to facilitate truth finding, not truth hiding. This then multiplies the cost to parties and the court system by requiring repeated litigation of the same facts." Ibid p. 855.

The appellate court states, "Duress by a third person" is the legal label for this contract case. Laura Fettig is trying to escape a settlement she put on the record." This Court is asked to hold that this case and similarly situated cases properly comply with the statutory classification requirements tort law provides and that denial of a legal tort action cannot be "thrown under the bus" of an alleged contract claim. To do so is judicial error that denies the

constitutional right to full recovery for all damages caused by a negligent party and must be overturned.

"Every Californian has rights that are guaranteed by the constitutions of the United States and California. These rights include the right to sue for money owed, not what they can get away with paying, and for other relief. Court performance standards must include integrity, which refers not only to the lawfulness of court actions but also the results or consequences of its orders and to ensure public trust and confidence—Justice should not only be done, but should be seen as it is being done." The 2006 Administrative Office of the Courts

CONCLUSION

In light of the foregoing, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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