No Stay (Response Tolled CCP §418.10)
Trial Not Yet Set

No. 22-6111

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE KATRESE NICKELSON, PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS TO THE
APPELLATE DIVISION OF SUPERIOR COURT OF LOS ANGELES
AND THE SUPERIOR COURT OF LOS ANGELES COUNTY

PETITION FOR A WRIT OF MANDAMUS

No Stay (Response Tolled CCP §418.10)

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QUESTIONS PRESENTED

1. Whether Assembly Bill No.2819's mandatory automatic and permanent case sealing requirements in limited unlawful detainer cases extends to sealing Appellate cases for Petitions for Writ of Mandate that are filed in such unlawful detainer cases, when the Legislature declared it enacted AB-2819 to prevent public disclosure in order to protect innocent tenants.

2. Whether the Super. Ct., after a plaintiff submitted false documentary evidence in the form of a fraudulent proof of service for substitute service and false declaration of diligence, and the defendant provided home surveillance evidence and personal knowledge refuting the false evidence, erred and abused its discretion in denying a Motion to Quash Summons after imposing the incorrect evidentiary standard in requiring the Defendant to overcome a presumption when the burden was shifted back on to the Plaintiff to provide additional evidence beyond the process server's perjured testimony?

3. Whether the Super. Ct. abused its discretion in denying a Motion to Quash when a Defendant demonstrates that service by posting was not effectuated properly because it was posted without a court order to post.

LIST OF PARTIES

All Parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose order is the subject of this petition is a as follows:

Hon. Alex Ricciardulli
Appellate Division
Superior Court of Los Angeles
111 N. Hill Street, Dept. 70
Los Angeles, CA 90012

Hon. Gregory Lesser
The Superior Court of Los Angeles County
275 Magnolia Ave., Dept. S13
Long Beach, CA 90802

TWM 740 24th TIC Member, LLC, Real Party in Interest
Menke Law Firm, APC., plaintiff's attorney
5000 E. Spring St, Ste 405
Long Beach, CA 90815

STATEMENT OF RELATED CASES

The following proceedings are directly related to the case in this Court.

- *Nickelson v. The Superior Court of the State of California for The County of Los Angeles,* No. BS-175969, Appellate Division of Superior Court. Orders entered June 16, 2022 and June 23, 2022.

- *TWM 740 24th TIC Member, LLC v. Nickelson,* No. 22LBUD00619, Superior Court of Los Angeles. Order entered June 8, 2022.

- *Nickelson v. The Superior Court of the State of California for The County of Los Angeles,* No. B321356, Court of Appeal 2nd Appellate District, Division Five. Order Aug. 8, 2022.

- *Nickelson v. The Superior Court of the State of California for The County of Los Angeles* No. S276034, The Supreme Court of California. Order entered Sept. 28, 2022.

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No opinions issued. The following orders were issued:

- Order of Appellate Division of the Superior Court Denying Defendant's Petition for Writ of Mandate, June 16, 2022.
- Order of Appellate Division of the Superior Court Denying Defendant's Motion to Seal the Appellate Case on Petition for Writ of Mandate, June 23, 2022.
- Order of Trial Court Denying Defendant's Motion to Quash Summons & Complaint, June 8, 2022.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1651. This petition herein shows that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of this Court's discretionary powers and adequate relief cannot be obtained in any other form or from any other court because petitioner has exhausted all remedies in the lower courts. The California Supreme Court order denying the petitioner's timely petition for discretionary review was filed on September 28, 2022. This petition was filed within 10 days of the California Supreme Court's denial of discretionary review. This Court subsequently requested a correction on the writ petition and petitioner hereby resubmit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C § 1651(a), provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

California Assembly Bill No. 2819 (See App. K)

California Code of Civil Procedure §418.10 (See App. L)

California Code of Civil Procedure § 415.10 in relevant part:

"A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery."

California Code of Civil Procedure § 415.45 (See App. M)

California Evidence Code Sec. 647 "The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return."

STATEMENT OF THE CASE

This case pertains to a wrongful unlawful detainer action (that does not involve nonpayment of rent), filed on or about May 10, 2022, wherein Plaintiff falsely alleges that Defendant caused a plumbing issue. Defendant has not yet been required to Answer, as almost the entire procedural history has involved false documentary evidence that the Plaintiff filed in court, and Plaintiff's complete failure to properly serve Defendant with a summons and complaint in a statutorily-authorized manner.

On May 11, 2022, a summons and complaint were posted on Defendant's front door without first obtaining a Court Order for posting. The Superior Court clerk confirmed to the Defendant that no application for posting was submitted by the Plaintiff, nor did the court issue an order allowing for posting.

On May 23, 2022, Defendant e-filed a Motion to Quash Service of Summons and Complaint ("MTQ") (App. H), calendared for June 17, 2022.

On June 1, 2022, Defendant filed in-person an amended MTQ. (App. F).

On June 1, 2022, after filing the amended MTQ, Defendant requested from the Clerk a copy of the proof of service Plaintiff filed on June 1, 2022, as reflected in the Case Registry that the Clerk printed for the Defendant on this same day.

On June 1, 2022, Defendant discovered that Plaintiff filed a fraudulent proof of service claiming substituted service on a fictitious person and a false declaration of diligence. (App. J)

Thus, on June 1, 2022, Plaintiff filed in court false documentary evidence in the form of a process server's fraudulent proof of service for substitute service and a fraudulent declaration of diligence. The false evidence was easily and promptly refuted with evidence by Defendant's Home Security Surveillance System and Defendant's knowledge. (App. J)

On June 8, 2022, Defendant filed a second amended MTQ. (App. G)

The Superior Court – Procedure and Orders

On June 2, 2022, Plaintiff filed ex parte motion to shorten/time on hearings.

On June 8, 2022, the hearing on the MTQ and demurrer took place. The MTQ was denied by the Super. Ct. Law & Motion ("L&M") Dept., the Hon. Commissioner Gregory Lessor, finding that the defendant has not overcome her burden as to the

rebuttable presumption of a valid substituted service and denied the motion to quash. (App.C). However, the trial court improperly imposed the incorrect evidentiary standard in requiring Defendant to overcome a presumption when the burden was shifted back on the Plaintiff to provide evidence beyond the process server's false testimony in order to prove its process server's declarations claiming proper service. Thereafter, Defendant petitioned for Writ of Mandate under CCP §418.10, in these Limited Jurisdiction cases to the Super. Ct. Appellate Division.

Superior Court Appellate Division – Procedure and Orders

Like the L&M MTQ, the Appellate Writ of Mandate to the Super. Ct. App. Div. pursuant to CCP §418.10 followed the sequence of having been heard in the L&M Dept. On June 16, 2022, the App. Div. rendered its Order of denial. The App. Div. upheld the Super. Ct. L&M Dept. and added that Petitioner did not provide an adequate record showing respondent abused its discretion in denying the motion to quash. (App. A)

After filing the Appellate Petition for Writ of Mandate, Plaintiff discovered that it was public record. Petitioner then filed in the Appellate Division a Motion for Order to Seal ("MTS") the appellate writ case based on the fact that the underlying trial case was sealed as required under AB 2819. (See App. I and K)

On June 23, 2022, the App. Div. denied Defendant's request to seal the case for the Appellate Petition for Writ of Mandate (Case No. BS-175969). (App.B) Defendant subsequently petitioned to the Court of Appeal Second Appellate District.

The Second District Court of Appeals Procedure and Orders

Within the time frame provided for by statute, on July 1, 2022, Petitioner took the Petition for Writ of Mandate and Motion to Seal ("MTS") to the Second District Court of Appeals, Division Five ("2 DCA"). On July 7, 2022, 2 DCA allowed Petitioner to file an Amended Writ Petition. On August 8, 2022, the 2 DCA summarily denied the Petition without opinion. (App. E)

The California Supreme Court Order

Within the time frame provided for by statute, on August 18, 2022, Petitioner took the Writ Petition to the California Supreme Court. On September 28, 2022, the court summarily denied the Petition without opinion. (App. D)

For the reasons herein, this Court should grant review to resolve the issues presented.

REASONS FOR GRANTING PETITION FOR WRIT OF MANDAMUS

This case presents novel issues and it is necessary to settle the important questions stated above, one of which is the for appellate courts on whether Assembly Bill 2819's mandatory automatic and permanent case sealing requirements in limited unlawful detainer cases extends to sealing Appellate Petitions For Writ Of Mandate cases that are filed in such unlawful detainer cases, when the Legislature declared it enacted AB-2819 to prevent public disclosure in order to protect innocent tenants. (App. K)

All appellate petitions for writ in limited unlawful detainer cases, like the records in the underlying case, should be automatically sealed and remain sealed under AB 2819.

The issue presented here is of great public importance and necessitates prompt resolution. This case presents an important question of law for Appellate Courts on whether Assembly Bill (AB) 2819's mandatory automatic and permanent case sealing requirements in limited unlawful detainer cases extends to sealing Appellate Petitions for Writ of Mandate cases that are filed in such unlawful detainer cases, when the Legislature declared it enacted AB 2819 to prevent public disclosure of such cases in order to protect the credit and reputation of innocent tenants. When an appellate petition for writ is filed during the case to challenge a ruling finding of jurisdiction, the related appellate petition case is not confidential despite the requirement to include all or a substantial portion of the record of the unlawful detainer matter below, which becomes public record, the prevention of which is the main purpose of the confidential protection of AB 2819 enacted by the Legislature. This compels needed action by the U.S. Supreme Court because the issue will continue to recur. It is important to provide guidance to Appellate courts regarding cases that are required by law to be automatically and permanently sealed (with few exceptions) in order to protect innocent tenants, as declared in AB 2819. (App. K)

From AB 2819:

> *(g) This act strikes a just balance ... **protecting the credit and reputation of innocent tenants.** .... This act is a response to the state's ongoing affordable housing crisis and is necessary to prevent tenants from being inadvertently denied an opportunity to secure housing simply as a result of being named in an unlawful detainer lawsuit." (emphasis added)*

Assembly Bill 2819, codified in California Code of Civil Procedure §§1161.2 and 1167.1., automatically and permanently seals all limited unlawful detainer (eviction) actions, *unless* the landlord prevails at a trial *within 60 days of filing the complaint..."* In this case, the landlord did not prevail within 60 days and the underlying trial case is permanently sealed, but the Appellate case for Petition for Writ is not sealed; it is public record.

Assembly Bill (AB) 2819, Section 1. states, in part:

> *"(b) It is the policy of the state that access to public records be limited or restricted only under compelling circumstances.*
>
> *(d) The state has a housing crisis that requires revising the current restrictions on public access to civil case records in unlawful detainer proceedings."...*
>
> *"(e) The difficulty of securing affordable housing in competitive rental markets is also worsened by the existing law governing access to civil case records in unlawful detainer proceedings. Specifically, once unlawful detainer civil case records become public, tenant screening companies and credit reporting agencies capture and publish personal identifying information regarding tenants named as defendants in those records. This information appears in published lists, known as unlawful detainer registries, and on tenants' credit reports."*

Therefore, it is critical that all appellate cases for Petition for Writ of Mandate, like the records in the underlying case, be sealed and remain sealed as required by AB 2819. This is of great importance to citizens of California and other citizens nationwide and needs a prompt resolution.

Unless AB 2819's mandatory immediate and permanent case sealing requirements are extended to seal appellate cases for petitions for writ of mandate in limited unlawful detainer cases, and the Appellate Court's denial of Petitioner's Motion to Seal the appellate case for the statutory petition for writ are reversed, credit reporting agencies will have access to the court file and can legally report the fact that an unlawful detainer-action was filed against the Petitioner, and other similarly-situated citizens, even though the underlying trial case is permanently sealed by law and no judgment has been entered against the Defendant, of whom the courts has no jurisdiction over because the Petitioner has never been properly served in a statutorily-authorized manner. The negative credit reporting will permanently impair the Defendant's, and other similarly-situated citizens', ability and right to obtain safe and affordable rental

housing in the future. This Court extending AB 2819' mandatory sealing requirement to apply to Appellate writ petition cases will effectuate one of the main purposes of the masking statute "*...to protect the credit and reputation of innocent tenants*" Especially where, as in Petitioner's case, petitioner is an innocent tenant. Additionally, the unlawful detainer has absolutely nothing to do with nonpayment of rent.

From AB 2819:

> *"(f) The names of thousands of innocent tenants whose cases are resolved only after the 60-day deadline appear on unlawful detainer registries. Many of these tenants successfully settle, secure a dismissal, or win at trial, and would have escaped negative credit reporting if only they had prevailed before the deadline. In other instances, unlawful detainer complaints are filed against tenants but never served."* (emphasis added)
>
> *"Because landlords, ...rely on unlawful detainer registries and on credit reports, landlords often choose not to rent to tenants who appear on these registries, even if the tenants were eventually found innocent of unlawful detainer. As a result, given the statewide housing shortage, these tenants may be shut out of rental markets... through no fault of their own."* (emphasis added)

If a Petitioner's Appellate case for a Petition for Writ remains unsealed, it will be indicated in the public records that an unlawful detainer case was filed against such petitioner.

In this case, the court's jurisdiction over the Petitioner has not yet been resolved, and where a defense is wholly valid, such harsh consequences to the Defendant and others similarly-situated are unwarranted. It is of paramount importance to Petitioner and all petitioners nationwide and statewide that Appellate case petitions for writ be sealed, so that future landlords will not reject rental applications. The failure to apply or extend AB 2819 automatic and permanent sealing requirements to Appellate case Petitions for Writ of Mandate will permanently and irreparably harm Petitioners, who should not be punished for having defended themselves against an unlawful detainer action and filed an appellate petition for writ of mandate.

This issue is of great importance to citizens nationwide and requires prompt resolution. The Appellate courts and Petitioners in this type of case would benefit from

this Court's guidance.

A Super. Ct abuses its discretion when, after a plaintiff submits false documentary evidence in the form of a process server's false proof of service and false declaration of diligence, and the defendant provides home surveillance evidence and personal knowledge refuting the false evidence, it denies a Motion to Quash after improperly imposing the incorrect evidentiary standard in requiring a Defendant to overcome a presumption when the burden was shifted back on the Plaintiff to provide evidence in addition to the process server's testimony in the face of the challenge presented by a Defendant's evidence refuting the false evidence that constitutes fraud upon the court.

In other words, the court should require that the Plaintiff to provide additional evidence beyond the fraudulent proof of service and process server's testimony. The plaintiff has the burden of showing that the purported service of the summons and complaint on defendant is valid. Case law in California is clear that once a defendant files a motion to quash service that the plaintiff has the burden of proving that the service was valid and the Plaintiff has not done so.

In *Summers*, "When a defendant challenges the court's personal jurisdiction on the ground of improper service of process `the burden is on the plaintiff to prove the existence of jurisdiction **by proving . . . the facts** requisite to an effective service." *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413, fns. omitted; see also *American Express Centurion Bank*

v. Zara (2011) 199 Cal.App.4th 383, 387. *See also Borsuk v. Superior Court*, (2015) 238 Cal. App. 4th Supp. 1, 4 (citing Lebel v. Mai

(2012) 210 Cal.App.4th 1154, 1163. (emphasis added) Here, the Plaintiff has not proven the alleged facts in the proof of service and declaration of diligence.

The trial court improperly imposed the incorrect evidentiary standard in requiring Defendant to overcome a presumption when the burden was shifted back on the Plaintiff to provide evidence in addition to the process server's (perjured) testimony in order to prove its process server's declarations claiming lawful service. A trial court is under a legal duty to apply the proper law, and it may be directed to perform that duty by writ of mandate. (*Hurtado, ibid.*; *Babb v. Superior Court* (1971)

3 Cal. 3d 841, 851.)

The Super. Ct. erroneously denied Defendant's motion to quash without the required showing of additional evidence needed to prove the Plaintiff's false claim of lawful service in the face of the challenge presented by Defendant's motion to quash and Defendant. See *Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1428 [presumption eliminated by challenge, requires additional evidence]

Evidence Code 647 "The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return."

The Super. Ct. erroneous ruling after applying the incorrect evidentiary standard has caused Defendant to be denied her due process right to a fair hearing during the process of defending against this wrongful unlawful detainer case.

The Proof of Service of Substituted Service is Completely Fabricated Constituting Fraud Upon The Court and The Trial Court Applied the Incorrect Evidentiary Standard, Therefore The Service is Not Valid and The Summons and Complaint Must Be Quashed.

When a Plaintiff's files false documentary evidence in court in the form of a fraudulent proof of service and fraudulent declaration of diligence, it is critical that the trial courts apply the correct evidentiary standard to provide the appropriate level of heightened scrutiny of an alleged proof of service, especially when a Defendant claims improper service based on the false facts stated in a fraudulent proof of service and declaration of due diligence, and where the Defendant presents video and/or photo evidence from their home surveillance system and their own knowledge refuting the false documentary evidence. In such instances, as in this case, when a trial court denies a Defendant's motion to quash, even when a Plaintiff submits a fraudulent proof of service and false declaration of diligence, without the court requiring the Plaintiff to produce additional evidence beyond the process server's testimony, it is an abuse of discretion.

Plaintiff falsely claimed that substitute service occurred, but Petitioner has video and photos from home surveillance showing that the process server just posted the

summons and complaint to the front door on May 11, 2022 without the required court order permitting service in this manner.

The process server claims that he came back and substitute served someone (a fictitious person) the next day, but this person was not at or in Petitioner's home. Petitioner does not know this person, they are not, and was not ever, an adult in occupation or a "co-occupant" or ever in Petitioner's home. It is an unknown, fictitious person the process server and Plaintiff created.

Plaintiff complains that the declaration of the registered process server overcomes Petitioner's challenge of lawful service by legal presumption. Plaintiff is incorrect. The case law clearly shifts the burden of proof to the Plaintiff when the claim of lawful service is challenged. Plaintiff is required to produce evidence "additional" to the process server's testimony. See *Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1428 [presumption eliminated by challenge, requires additional evidence].

In this matter, a description of the person via a video or photo evidence of a person known to defendant while of to whom substitute service was purportedly effectuated would be appropriate. However, that is not possible because the proof of service is completely fabricated and thus false documentary evidence. The process server, themselves, should have access to body cameras or recording devices in this era of inexpensive technology.

By not requiring the additional evidence and relying on the false evidence in the form of a fabricated proof of service and false testimony, the Super. Ct. allowed Plaintiff to win the day in a textbook manifest injustice, that, unfortunately, appears to be so common these days. As stated above, the purported "substitute service" was completely false, deficient and unlawful. The registered process server fabricated said person and/or circumstances and created false evidence.

Plaintiff alleges that Defendant was served via substituted service. However, the alleged first three attempts to personally serve Defendant alleged in Plaintiff's proof of service are false, as shown by Defendant's Ring doorbell home surveillance footage and alerts and Defendant. And further, the alleged substituted service on May 12, 2022 alleged in the proof of service was fabricated, as evidenced by Defendant's Ring

surveillance footage and alerts and Defendant's knowledge.

Thus, a Plaintiff now has the burden of showing that the purported substituted service of the summons and complaint on a Defendant is valid, but the Plaintiff cannot do so because it is completely fabricated.

Defendant has a Ring doorbell at her front door that video records all movement, and it can definitively determine the times and dates that a person appeared at her door (or walked past the door) such as any attempts to serve Defendant, or to post something on her door as Plaintiff did on May 11, 2022.

In addition, the substituted service in which the Plaintiff's process server alleges to have posted the summons and complaint on Defendant's door after three previous attempts to serve her also did not occur, also shown by the Ring doorbell surveillance footage. All of this was provided to the Super. Ct. and thus the Super. Ct. ruling that the evidence was not sufficient is in grave error.

On May 12, 2022 at 10:16 a.m. (including a few minutes before and a few minutes after), no person appeared at Defendant's door as alleged in the proof of service. There was no service by substitution as alleged in Plaintiff's proof of service because it was not possible. It was not possible because, on May 12, 2022, there was no other adult in defendant's home who could have received a copy of the summons and complaint for defendant. Defendant does not know, and has never known, a person named "Daniella Williams" in Plaintiff's proof of service. The person named and identified as "Daniella Williams" has never been in Defendant's home. No person with the physical description of "Daniella Williams" stated in Plaintiff's proof of service has ever been in Defendant's home. There was no service by substitution.

The Plaintiff was not, and never will be, able to provide any "additional evidence" because the proof of service of substituted service is false evidence that is completely fabricated. The trial court abused its discretion by denying the MTQ after applying the incorrect evidentiary standard; therefore, the purported substitute service is not valid, and the summons and complaint must be quashed.

Whether The Super. Ct. Abuses its Discretion in Denying a Motion To Quash When a Defendant Demonstrated that Service By Posting Was Not Effectuated Properly Because it Was Posted On The Front Door Without a Court Order For Posting.

A Motion to Quash should be granted when service by posting was not effectuated properly due to failure to obtain a required court order to post.

Code of Civil Procedure § 418.10 states in pertinent part that:

"A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her".

Code of Civil Procedure § 415.10 states in part:

"A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery."

As shown by the Defendant's Motion to Quash Service of Summons, she was not personally served. Therefore, the purported service of the summons and complaint was not valid.

Further, the posting of the summons and complaint on the front door was not valid as Code of Civil Procedure § 415.45 states that,

"(a) A summons in an action for unlawful detainer of real property may be served by posting if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in any manner specified in this article other than publication and that: (1) A cause of action exists against the party upon whom service is to be made or he is a necessary or proper party to the action; or (2) The party to be served has or claims an interest in real property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding such party from any interest in such property. (b) The court shall order the summons to be posted on the premises in a manner most likely to give actual notice to the party to be served and direct that a copy of the summons and of the complaint be forthwith mailed by certified mail to such party at his last known address. (c) Service of summons in this manner is deemed complete on the 10th day after posting and mailing. (d) Notwithstanding an order for posting of the summons, a summons may be served in any other manner authorized by this article, except publication, in which event such service shall supersede any posted summons". (App. M)

The plaintiff did not request, nor did it obtain an order, from the Super. Ct. to allow posting of the summons and complaint. The plaintiff's posting of the summons and complaint on the front door on May 11, 2022 did not constitute valid service and must be quashed.

And the fact that Defendant may have received the summons and complaint does not preclude a motion to quash due to the fact that Plaintiff did not serve the summons and complaint in a statutorily-authorized manner. As such, the fact that defendant (from the posting) has notice of the action is not relevant as defective service of process is not cured by actual notice of the action. See *In re Vanessa Q.* (2010) 187 Cal.App.4th 128, 135.

Even when the defendant tenant actually received summons and complaint and otherwise have actual notice of the lawsuit, a motion to quash will lie if process was not served in a statutorily-authorized manner. *Schering Corp. v. Super.Ct. (Ingraham)* (1975) 52 Cal. App. 3d 737, 741.

It is well settled in California that personal service is the preferred means of service to notify a defendant of the commencement of a lawsuit. Personal service is the preferred means to notify a defendant of the issuance of a summons and the commencement of a lawsuit. *Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 41.

Defendant has introduced credible evidence that would more than support a finding of nonexistence of proper service in that there was complete failure to comply with the statutory requirements for service. Defendant was not served properly with the summons and complaint. Defendant was not personally given a copy of the summons and the complaint.

A copy of the summons and complaint was not mailed. Defendant did not receive a copy of the summons and complaint in the mail. No personal, substituted, or "nail and mail" service was achieved on Defendant. Service of the summons and complaint was not made as required by statute. The summons and complaint were not personally served on defendant. Nor did Plaintiff file any application to the court asking for permission to serve by "posting and mailing" pursuant to Code of Civil Procedure Section 415.45.

Therefore, because the Plaintiff did not obtain a court order to allow posting of the summons and complaint, the posting of the summons and complaint on the defendant's

front door on May 11, 2022 did not constitute valid service and should be quashed.

"[N]o California appellate court has gone so far as to uphold a service of process solely on the ground the defendant received actual notice (actual notice in this case, from the unlawful posting) when there has been a complete failure to comply with the statutory requirements for service." *Summers v. McClanahan* supra, 140 Cal.App.4th at 414.

Therefore, the Super. Ct. abused its discretion by denying the Petitioner's MTQ.

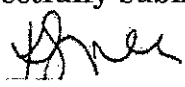
CONCLUSION

Defendant(s) respectfully request that this Court Grant Review, and reverse the Appellate Court's Orders denying relief and the Trial Court's denial Order denying relief, and require entry of an order in favor of Petitioner by granting the motion to quash and motion to seal the appellate cases.

For the foregoing reasons, the Petition for Writ of Mandamus should be granted.

Dated: November 3, 2022

Respectfully submittd.



By _____

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