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SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, DC 20543-0001

Haroun Bacchus, Petitioner, v. Misty Thomson and Alexander Yerkes, Respondents.	Aplt. Case No. BV033362 Aplt. Case No. BV034226 Trial Ct. Case No. 15K00946 APPENDICES FOR WRIT OF CERTIORARI (Filed Under Separate Cover) VOLUME 1 OF 1

APPENDICES

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APPENDIX A

APPELLATE DIVISION OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

HAROUN BACCHUS, Plaintiff and Appellant, v. MISTY THOMSON, et al. Defendants and Respondents.	No. BV 033362 Central Trial Court No. 15K00946 **OPINION**

INTRODUCTION

Haroun Bacchus (plaintiff) sued Misty Thomson and Alexander Yerkes (collectively defendants) seeking monetary compensation for the damage, destruction, and theft of his property during the time plaintiff and defendants were tenants residing in the same apartment. The cause eventually proceeded to a court trial where defendants prevailed on both the lawsuit and subsequent motion for an award of costs.

On appeal, plaintiff seeks reversal of the judgment and the order awarding costs. As explained below, we find none of his contentions challenging the judgment have merit and, because plaintiff failed to file a notice of appeal from the order awarding costs, we have no jurisdiction over it. Accordingly, we affirm the judgment and dismiss the purported appeal from the order awarding costs.

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BACKGROUND

On November 13, 2018, plaintiff filed a Second Amended Complaint (SAC) against defendants alleging causes of actions for trespass, violation of privacy rights, property damage and theft by conversion.[1] Prior to commencement of the trial, plaintiff unsuccessfully sought court orders to compel each defendant to answer general and special interrogatories and to admit the truth of and genuineness of matters specified in requests for admissions. Thereafter, plaintiff's ex parte motion for reconsideration of the orders denying his motions to compel and admit were denied.

A bench trial took place on December 17, 2019. Plaintiff was self-represented and defendants, who were not present, were represented by counsel. Prior to the commencement of testimony, and after arguments from both sides, the trial court adopted its tentative ruling to deny plaintiff's Motion in Limine Nos. 1-5[2] based on defendants' opposition, and the parties made opening statements.

Plaintiff was called as a witness in his case-in-chief. During plaintiff's testimony, the defense objected to plaintiff's use of exhibits that were not included on the joint exhibit list. The trial court sustained the objection and limited plaintiff's exhibits to those that were listed on the joint exhibit list. In testifying, plaintiff referenced numerous other exhibits and was cross-examined by the defense. The court sustained the defense objections to the admission of some of plaintiff's exhibits into evidence.

Plaintiff's testimony can be summarized as follows.[3] He moved into the apartment in 1993 and Thomson became a tenant in the apartment in 2004. Plaintiff did not continuously reside in the apartment after Thomson and Yerkes became tenants due to defendants obtaining more than one restraining order against plaintiff, and because defendants locked plaintiff out of

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[1]Plaintiff commenced the litigation that is the subject of this appeal by filing a complaint for damages on January 30, 2015, against defendants.

[2]Plaintiff's Motions in Limine Nos. 1-5 are addressed in detail in the Discussion portion of this opinion, *post*.

[3]Plaintiff's trial testimony was disjointed.

the apartment from August 2014 to August 2018. On February 1, 2012, plaintiff returned to the apartment and found that property in his bedroom was damaged. Plaintiff next returned to the apartment on October 25, 2014, where he found additional property of his damaged and took photographs of the damage. On July 15, 2018, plaintiff made another visit to the apartment and found additional property of his damaged, other property of his that was usually kept in the common areas of the apartment had been moved into his bedroom, and property that did not belong to plaintiff was left in his bedroom. According to plaintiff, the "NCIS" broke into his room but paid him for the damage it caused. The landlord did not have a key to his room.

At the conclusion of plaintiff's case, the court granted a defense motion for nonsuit on the ground plaintiff failed to sustain his burden of presenting sufficient evidence to prove defendants' liability for any damages incurred by plaintiff.

On December 27, 2019, defendants served plaintiff by mail with notice of entry of judgment and plaintiff thereafter timely filed a motion for a new trial and defendants filed an opposition thereto. The motion was denied on February 11, 2020. Plaintiff filed an ex parte motion for reconsideration on February 20, 2020, which was denied on February 21, 2020. On February 24, 2020, plaintiff filed a notice of appeal from the December 27, 2019 final judgment, and the following day, he filed a notice of appeal from the February 11, 2020 order denying his motion for a new trial and the February 21, 2020 order denying his ex parte motion for reconsideration.

On January 6, 2020, defendants filed a memorandum of costs and on February 25, 2020, Yerkes filed an amended memorandum of costs. Plaintiff thereafter filed a motion to strike or in the alternative a motion to tax costs. On March 11, 2020, the trial court, after taxing some of the listed items, granted defendants costs in the amount of $2,361. Plaintiff did not file a separate notice of appeal from the order awarding costs.

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DISCUSSION

Plaintiff's amended opening brief is not a model of clarity.[4] It appears that plaintiff assigns error to the trial court's rulings denying his discovery motions and motions for reconsideration, motions in limine, the court's orders excluding evidence during the trial, and the order awarding costs.

Discovery Motions and Motions for Reconsideration

"A discovery order is normally reviewed under the deferential abuse of discretion standard. [Citations.]" (*Pirjada v. Superior Court* (2011) 201 Cal.App.4th 1074, 1085.) "An abuse of discretion occurs when, in light of applicable law and considering all relevant circumstances, the court's ruling exceeds the bounds of reason. [Citations.]" (*North American Capacity Insurance Co. v. Claremont Liability Insurance Co.* (2009) 177 Cal.App.4th 272, 285.) "A judgment or order of a lower court is presumed to be correct on appeal, and all

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[4]The amended opening brief has two headings with each having various subheadings:
"I. Due Process Violations Result from Pleadings and Documents that are Procedurally Unfair in the Record which the Court Relied on to Make Rulings on Matters
A. The Standard of Review
B. Trial Court Procedures Must be Followed to Allow Parties to the Controversy Equality in Justice for the Following Issues:
(1) Fabricated Pleadings and Documents Misled the Court
(2) Discovery Motions Were Not Heard on Their Merits
(3) Motion to Strike or Tax Costs Was Not Adjudicated Fairly
(4) Civil Subpoenas were Rejected by the Respondents
"II. In the Alternative, the Court Should Reverse the Judgment and Remand for a New Trial Because the Trial Court Erred in the Absence of Procedures for the Trial Exhibit Binder, and Committed Error in Receipt of Subpoenaed Documents, and Erroneously Admitted and Excluded Evidence, and Admitted Errors by the Defense in the Controversy Between the Parties
A. The Standard of Review
B. Judicial Decisions Should be Based on Accurately Applying the Law to the Facts of the Following Issues:
(1) Binders for use at trial
(2) Media Subpoenas
(3) Motions in Limine Nos. 1, 2, and 5
(4) Trespassing as to Chattels
(5) Handwriting Evidence
(6) Trial Brief
(7) Motions in Limine Nos. 3 and 4
(8) Application for Reconsideration of an Order for New Trial"
(Some capitalization and punctuation, and all underlining are omitted.)

intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) "'[A] reviewing court generally will not substitute its opinion for that of the trial court and will not set aside the trial court's decision unless "there was 'no legal justification' for the order granting or denying the discovery in question."' [Citations.]" (*Pirjada v. Superior Court, supra,* at p. 1085.)

Plaintiff complains that his discovery motions were not heard on the merits because of the number of times the motions were continued due to the unavailability of judicial officers and because he was not provided sufficient time to argue the merits of his motions. This contention cannot serve as the basis for reversal of the judgment because plaintiff failed to provide this court with an adequate record for review. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) Plaintiff did not designate for inclusion in the record the official electronic recording of the October 19 proceedings where the trial court denied his discovery motions. Likewise, plaintiff does not identify the portion of the clerk's transcript that supports his contention that he was either denied the right to adequately argue his discovery motions or where his motions were continued because of the unavailability of a judicial officer to decide the motion. (Cal. Rules of Court, rule 8.830(b); see *World Business Academy v. California State Lands Com.* (2018) 24 Cal.App.5th 476, 492-493.) A purported error must appear on the record. (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574-575.) We cannot reverse a judgment based on a party's statement of what transpired during the complained-of court proceedings. (*Mitchell v. City of Indio* (1987) 196 Cal.App.3d 881, 890.)

Plaintiff also complains that defendants' responses to his motions to compel discovery were fabricated. The issue of whether defendants made untrue statements in opposing plaintiff's motion to compel arose during plaintiff's motions for reconsideration of the orders denying his motions to compel and to deem matters admitted. The motions for reconsideration, which were filed as ex parte applications, were denied because the trial court found that plaintiff failed to make a showing of "irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte" as required by California Rules of Court, rule 3.1202(c). Contrary to plaintiff's assertion, the merits of the motions for reconsideration were

not reached because plaintiff failed to demonstrate his entitlement to ex parte relief. (See *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1277.) At no place in his briefs does plaintiff challenge the correctness of the trial court's rulings under the cited rule. Accordingly, because the issue of fabricated discovery responses was not presented to or ruled on by the trial court, there is nothing for this court to review. (See *id.* at pp. 1276-1277.)

Motions in Limine

Prior to trial, plaintiff filed five separate motions in limine (MIL) seeking to exclude the following: defendants' responses to requests for admissions, set one (MIL Nos. 1 & 2); evidence of previously litigated cases by plaintiff as reflected in Yerkes' April 23, 2019 opposition (MIL No. 3); evidence of plaintiff's arrest at the apartment on May 29, 2011, as reflected in Santa Monica Police Department Form 142 (MIL No. 4); and all evidence and witnesses not disclosed by defendants in their responses to discovery request (MIL No. 5). Each motion was supported by a declaration from plaintiff that alleged he was self-represented and set forth the way he provided notice to defendants of each motion. Plaintiff did not attach to his motions as applicable, his discovery requests, defendants' responses, the list of previously litigated cases, or Santa Monica Police Department Form 142.

Defendants filed an opposition to each MIL asserting procedural and substantive grounds for denying the relief requested by plaintiff. At a hearing prior to trial, the court denied each MIL basing its ruling on the grounds "stated in defendants' oppositions."

Plaintiff's arguments on appeal concerning the MILs are muddled. Plaintiff is required to "affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority. [Citations.]" (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) "'This requires more than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to the appellate court to figure out why; it is not the appellate court's role to construct theories or arguments that would undermine the judgment . . . .' [Citation.]" (*Lee v. Kim* (2019) 41 Cal.App.5th 705, 721.)

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Here, plaintiff fails to set forth a developed argument supported by pertinent authority supporting his contention that the trial court's ruling was erroneous, he fails to indicate whether any of the information he sought to exclude was admitted, he fails to identify the information at issue, and he fails to demonstrate that absent the erroneous ruling, it is reasonably probably he would have received a more favorable trial outcome. (*MacQuiddy v. Mercedes-Benz USA, LLC* (2015) 233 Cal.App.4th 1036, 1045-1046.) Plaintiff has not overcome the presumption of correctness. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at p. 1133.)

Civil Subpoenas

The complaint here is that defendants failed to respond to "civil subpoenas" issued by plaintiff, and they failed to produce the requested documents for trial. Plaintiff argues that he was harmed because, had he prevailed at trial, the financial records would have been available for the trial judge to review and to "make a decision for an award of punitive damages."

This contention is not supported by a sufficient showing that the issue has been preserved for appellate review, and on its face is patently devoid of merit. (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 589.) Plaintiff has failed to demonstrate that a party's failure to respond to a subpoena standing alone is sufficient to bring the issue before this court. It is not our function to act as counsel on appeal for plaintiff, and we decline to do so. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.)

Costs Award

As plaintiff correctly notes in his amended opening brief, an order granting costs is appealable under Code of Civil Procedure section 904.2, subdivision (b). However, to invoke this court's jurisdiction to review an order of the trial court, the aggrieved party is required to timely file a notice of appeal. (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1315-1316; Cal. Rules of Court, rule 8.822(d).) Here, plaintiff filed two notices of appeal prior to March 11, 2020, the date the court issued the appealable cost order. The first notice of appeal was filed on February 24, 2020, and the second notice of appeal was filed the next day—February 25, 2020. The former notice specified the December 27, 2019 judgment. Whereas

the latter notice identifies the February 11, 2020 order denying the motion for a new trial and the February 21, 2020 order denying plaintiff's ex parte application for reconsideration of the order.

"'"[W]here several judgments and/or orders occurring close in time are separately appealable (e.g., judgment and order awarding attorney fees), each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal.'" [Citations.] The policy of liberally construing a notice of appeal in favor of its sufficiency [citation] does not apply if the notice of appeal is so specific it cannot be read as reaching a judgment or order not mentioned at all. [Citations.]" (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 173.) Where, as here, notices of appeal are filed before the subject ruling, the attempt to appeal is untimely and cannot be treated as a premature but timely notice of appeal. (See *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 960-961.)

Binders for Trial

It appears plaintiff is arguing that there is no rule requiring him to prepare and provide a joint exhibit binder for use at trial and that his failure to do so may have impacted the trial judge's decision to grant judgment for defendants. This contention is not supported by the record and defendant fails to direct this court's attention to that portion of the trial proceedings that directly or indirectly supports his speculative statement. (Cal. Rules of Court, rule 8.883(a)(1)(B); *World Business Academy v. California State Lands Com.*, *supra*, 24 Cal.App.5th at pp. 492-493, 504.) We will not search the record,[5] research the law or in any manner act as counsel on appeal for plaintiff. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286-287; *Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546.) Plaintiff is not exempt from the rules of appellate procedure based on his status as a self-represented litigant. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

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[5]The record on appeal includes a six-volume clerk's transcript containing 1,326 pages.

Media Subpoenas

Plaintiff's complaint here is that certain documents sent to the court in response to a subpoena were "lost somewhere in Department 94, and were never located after its move from the Stanley Mosk Courthouse to the Spring Street Courthouse according to the clerk in this department on January 15, 2020." Plaintiff's citations to the clerk's transcript do not support this factual contention[6] that documents were subpoenaed, sent to the court and lost by the clerk.[7] It is axiomatic that a judgment cannot be reversed based on factual assertions that are not supported by the record on appeal. (*Muller v. Reagh* (1959) 170 Cal.App.2d 151, 155; *Mitchell v. City of Indio, supra*, 196 Cal.App.3d at p. 890.) This contention cannot serve as a basis to reverse the judgment.

Trespassing as to Chattels

Plaintiff argues that defense counsel, while cross-examining plaintiff, erroneously questioned plaintiff as if plaintiff's trespassing cause of action was for trespass to land rather than for trespass to chattel as pled in the SAC. Plaintiff speculates that this line of questioning "may have influenced [the trial judge's] reasoning" and resulted in a due process violation. The primary defect with this contention is that plaintiff does not contend that he objected to this line of questioning or that ever brought the matter to the court's attention. (See *County of Sacramento v. Lackner, supra*, 97 Cal.App.3d at p. 589.) Questions and the arguments of

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[6]Plaintiff's first citation is to 3 CT 685-687 which consist of: (1) a cover sheet for proof of service by email with a file stamped date of August 23, 2019; (2) a declaration of proof of service by Jennifer Wasson declaring that on August 9, 2019, she served defendants' counsel with two Civil Subpoenas (Duces Tecum), one for Facebook, Inc. and one for LinkedIn Corporation; and (3) a page containing an email from plaintiff to defense counsel informing him of the transmission of the two subpoenas and requesting an email return receipt, and defense counsel's email acknowledging receipt of plaintiff's message. The second citation by plaintiff is to 4 CT 827, paragraph 2. This is part of plaintiff's memorandum of points and authorities in support of his motion for a new trial wherein he alleges that LinkedIn Corporation responded to his subpoena and, according to the clerk, the records could not be located.

The court has no duty to search the record; rather, it is the duty of the parties to properly cite to the record. (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379.)

[7]We also note that plaintiff does not identify the missing documents nor contend or direct this court to the place in the record where he raised this issue in the trial court and sought relief from the trial judge. (See *County of Sacramento v. Lackner, supra*, 97 Cal.App.3d at p. 589.)

counsel are not evidence. (*Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, 139.) "Evidence" is defined as "testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." (Evid. Code, § 140.) Moreover, plaintiff cannot successfully complain on appeal because of the trial court's failure to do something it was not asked to do. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603.) A guiding principle of appellate jurisprudence is that until the contrary is shown, a trial court is presumed to have known and followed the law. (*Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, 783.) Plaintiff has failed to overcome the presumption of correctness. (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133.)

Handwriting Evidence

Plaintiff testified that he found property in his room that did not belong to him and property of his that was normally kept in other parts of the house. Some of the property had handwritten post-its or stickers on it. Plaintiff compared the writings on the various pieces of paper with what he believed to be handwriting samples of defendants that he obtained from court documents. One was a post-it note with the words "power on" and the words "old flash" written on something. Plaintiff compared the writings with exemplars on documents he obtained from each defendant in response to discovery requests. According to plaintiff, he obtained a match and prepared a written handwriting comparison analysis that he sought to present as an exhibit. The defense objected on the grounds plaintiff was not an expert and he failed to identity as exhibits the documents that he relied upon for this analysis. In response to questioning from the court, plaintiff admitted that he had no training in handwriting analysis and that he had never qualified in court as a handwriting comparison expert. The court ruled that exhibit 7—the handwriting analysis prepared by plaintiff—could not be introduced into evidence.

Against the above background, plaintiff complains his evidence was admissible under Evidence Code section 1416 and rule 701 of the Federal Rules of Evidence. Plaintiff is incorrect. Initially, we note that plaintiff fails to explain why a federal rule of evidence is controlling in state court proceedings. Judicial proceedings in the state are governed by the

California Evidence Code. (Evid. Code, § 300.) We reject without further discussion the contention that a federal evidentiary rule is applicable to this proceeding.

The trial court's decision to exclude evidence is reviewed on appeal under the abuse of discretion standard. (*Zuniga v. Alexandria Care Center, LLC* (2021) 67 Cal.App.5th 871, 883-884.) "'The abuse of discretion standard affords considerable deference to the trial court, provided that the court acted in accordance with the governing rules of law.' [Citation.]" (*Nuño v. California State University, Bakersfield* (2020) 47 Cal.App.5th 799, 808.) The trial court's decision to exclude plaintiff's exhibit followed the requirements of Evidence Code section 1416. The statute allows a person who is not an expert to state an opinion on whether a writing is in the handwriting of a supposed writer if the court finds that the person has personal knowledge of the handwriting of the supposed writer.[8] (Evid. Code, § 1416.) At no time did plaintiff seek to render an opinion on the basis that he had personal knowledge of the handwriting of either defendant. Instead, plaintiff sought to render an opinion based on a comparison of the words "power on" and "old flash" with what he identified as known writing exemplars from each defendant. Considering that plaintiff testified he lacked expertise about the subject matter—a handwriting comparison—of which he was seeking to render an opinion, the trial court did not abuse its discretion in excluding his testimony and the exhibit upon which it was based. Plaintiff's reliance on Evidence Code section 1416 is unavailing.

Trial Briefs

The subject matter under this heading reads as a stream of consciousness. Plaintiff complains about defense counsel asking him during cross-examination if he damaged his own property. Plaintiff attempts to demonstrate—by relying upon documents attached to his complaint and statements by others, but that were not trial exhibits or offered as evidence during the trial—that defense counsel's accusation was "false." This approach to appellate

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[8]The statute defines "personal knowledge" as being "acquired from: (a) Having seen the supposed writer write; [¶] (b) Having seen a writing purporting to be in the handwriting of the supposed writer and upon which the supposed writer has acted or been charged; [¶] (c) Having received letters in the due course of mail purporting to be from the supposed writer in response to letters duly addressed and mailed by him to the supposed writer; or [¶] (d) Any other means of obtaining personal knowledge of the handwriting of the supposed writer." (Evid. Code, § 1416.)

practice is not successful. Our review is limited to the evidence that was presented during the trial. (See *Vernon Fire Fighters Assn. v. City of Vernon* (1986) 178 Cal.App.3d 710, 721.) The matters relied upon by plaintiff do not become evidence simply because he added them to the record during the course of this protracted litigation.[9] (See *Grant-Burton v. Covenant Care, Inc., supra*, 99 Cal.App.4th at pp. 1378-1379.)

Plaintiff also relies on his motion for a new trial and attachments thereto and complains that the trial court's February 11, 2020 minute order[10] denying his motion for a new trial failed to "recognize" "the errors." We discern no legal arguments in plaintiff's contention. Because plaintiff fails to set forth a cogent argument that is supported by citation to authority or to the record, we deem this contention forfeited. (*City of Santa Maria v. Adam, supra*, 211 Cal.App.4th at pp. 286-287.)

Reconsideration of Order Denying Motion for a New Trial

The trial court, in denying plaintiff's motion for reconsideration, found that it was a "duplication of the original Motion for New trial and reflects an attempt by the Plaintiff to re-package his Motion for New Trial under the guise that these items are new or different facts, circumstances, or law." Plaintiff argues that the evidence he submitted with his motion for reconsideration was new evidence that he did not submit with his original motion. This contention lacks merit. Assuming without deciding that plaintiff presented facts in his motion that were not previously considered, he would not be entitled to relief on appeal. In addition to presenting new facts, plaintiff was required to "show diligence with a satisfactory explanation for not presenting the new or different information earlier [citations]." (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 839, 833, and cases cited.) In the absence of such a showing, the trial court did not err when it denied plaintiff's motion for reconsideration.

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[9]"The larger and more complex the record, the more important it is for the litigants to adhere to appellate rules. [Citation.]" (*City of Santa Maria v. Adam, supra*, 211 Cal.App.4th at p. 287.)

[10]In denying plaintiff's motion for a new trial, the court referenced its tentative ruling and a written ruling that was filed on the same date. Plaintiff did not designate either ruling for inclusion in the record.

DISPOSITION

The judgment is affirmed and the purported appeal from the order awarding costs is dismissed. Defendants to recover their costs on appeal.

P. McKay, P. J.

We concur:

Kumar, J.

Ricciardulli, J.

APPENDIX B

APPELLATE DIVISION OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

HAROUN BACCHUS, Plaintiff and Appellant, v. MISTY THOMSON, et al. Defendants and Respondents.	BV 034226 Spring Street Trial Court No. 15K00946 **OPINION**

Plaintiff and appellant Haroun Bacchus timely appeals from the September 3, 2020 order finding him, under Code of Civil Procedure section 391.1, to be a vexatious litigant and requiring him to post an undertaking and obtain a prefiling order. We affirm.

BACKGROUND

The underlying civil case commenced on January 30, 2015, when plaintiff filed a complaint for damages against Misty Thomson and Alexander Yerkes (collectively defendants). On December 17, 2019, the cause proceeded to a bench trial on plaintiffs' November 13, 2018 filed Second Amended Complaint, alleging causes of actions for trespass, violation of privacy rights, property damage and theft by conversion. The litigation spawned from problems that arose when plaintiff and defendants became roommates. Prior to the filing

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of the complaint, the parties filed mutual restraining orders and small claims court and other actions against each other arising from the conduct that precipitated the litigation.

Defendants prevailed on the Second Amended Complaint. Plaintiff's motion for a new trial was unsuccessful and his motion for reconsideration of the order denying him a new trial also failed. Later, defendants were awarded costs. Plaintiff filed notices of appeal on February 24, 2020, and on February 25, 2020, seeking review of the judgment and the order denying his motion for a new trial and for reconsideration.[1]

On April 27, 2020, Yerkes filed a motion seeking to have the court deem plaintiff a vexatious litigant and to require plaintiff to post security. Plaintiff filed an opposition, and a hearing on Yerkes's motion took place on September 3, 2020.

Thereafter, and in a minute order, the trial court found plaintiff to be a vexatious litigant under Code of Civil Procedure section 391, subdivision (b)(3),[2] and filed an order prohibiting plaintiff from filing any new litigation without the approval of the presiding judge or justice of the court in which the action is to be filed. The court also found that "what is left on this case are the proceedings in the appellate department [sic]" and ordered plaintiff to post an undertaking of $15,000 "within twenty (20) days or the appellate department will be requested to dismiss the appeal."

The court's minute order cited what it labeled as the "relevant procedural history" of the case starting with the filing of the complaint on January 30, 2015, and ending on March 11, 2020, with the court's ruling on plaintiff's motion to strike or tax the memorandum of costs. Included in the court's history of litigation are instances where various motions, applications and pleadings filed by plaintiff were denied by the trial court. The trial court summarized the litigation history as follows: "Plaintiff in this action has filed dozens of motions and

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[1]This court affirmed the judgment and dismissed plaintiff's purported appeal from the order granting defendants' costs. (*Bacchus v. Thomson* (Feb. 9, 2022, BV 033362) [nonpub. opn.].)

[2]The trial court described Code of Civil Procedure section 391, subdivision (b)(3) as "require[ing] only that a litigant 'repeatedly file [] unmeritorious motions, pleadings, or other papers, conduct[] unnecessary discovery, or engage[] in other tactics that are frivolous or solely intended to cause unnecessary delay.'"

Further statutory references are to the Code of Civil Procedure.

applications over the course of the litigation, four unsuccessful discovery motions, and five applications or motions challenging the Court's rulings. [¶] Finally, it took Plaintiff three-and-a-half years to even serve Defendants with this action; he then repeatedly filed for ex parte relief when there was no exigency." The court found that "in light of the judgment at trial, the ruling on the Motion for New Trial, and the ruling on the Motion for Reconsideration of the order denying the Motion for a New Trial" there was no reasonable probability plaintiff would prevail in the remaining litigation—the appeal—against defendants.

On October 5, 2020, plaintiff filed a notice of appeal from the September 3, 2020 order.

DISCUSSION

"'The vexatious litigant statutes [citations] are designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants. [Citation.]'" (*In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1345.)

The statutory scheme provides four separate and distinct courses of conduct that may serve as the basis for finding a person to be a vexatious litigant (§ 391, subd. (b)(1)-(4)) and provides two remedies (§§ 391.7 [obtain a prefiling order], 391.1-391.6 [furnish security]). Here, the trial court found plaintiff fell within section 391, subdivision (b)(3) because, while proceeding without counsel, he "repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." In order to require a litigant to post a security, the trial court must find that there is no reasonable probability that the person will prevail in the litigation against the moving defendant. (§ 391.1.)

There is no specific number of motions or pleadings that must be filed for the litigant's conduct to satisfy the "repeatedly" element of the statute. According to case law, the word "repeatedly" for the purpose of the vexatious litigant statutes "refers 'to a past pattern or practice on the part of the litigant that carries the risk of repetition in the case at hand.' [Citation.]" (*Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th 1260, 1267.) "[A]s few as three motions might form the basis for a vexatious litigant designation

where they all seek the exact same relief which has already been denied or all relate to the same judgment." (*Id.* at p. 1266.)

""""A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court's ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment." [Citation.]'" (*In re Marriage of Rifkin & Carty*, *supra*, 234 Cal.App.4th at p. 1346.)

The trial court's finding that plaintiff was a vexatious litigant is supported by substantial evidence. (*Goodrich v. Sierra Vista Regional Medical Center*, *supra*, 246 Cal.App.4th at p. 1268.) Plaintiff satisfied the first prong of the test because he was a person acting without counsel. As for the second prong, the trial court found that plaintiff repeatedly filed unmeritorious motions, pleadings, or other papers. The court identified 12 unsuccessful pleadings that included ex parte applications and motions for reconsiderations and for discovery.[3] Lastly, the court found that, based upon the judgment and the rulings on plaintiff's motions for a new trial and reconsideration of the order denying the motion for a new trial, there was not a reasonable probability that plaintiff would prevail on appeal—the remaining part of the litigation.

Under a variety of headings, plaintiff sets forth the reasons why the order should be reversed. His reasons can be summarized as follows: he followed the rules and procedures in preparing his documents; his documents had merit and were filed in good faith; the delays were due to problems he encountered in attempting to serve defendants; his claims against

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[3]Not all the motions, pleadings or other papers relied upon by the trial court can be found in the record for either BV 034226—the appeal from the vexatious litigant order or BV 033362—the appeal from the judgment. On plaintiff's motion, the court consolidated the two appeals. After the motion to consolidate was granted, plaintiff for unbeknown reasons filed an opening brief for each appeal with each brief raising different issues. The court, in the interest of justice and to avoid additional delays, vacated the order consolidating the appeals and ordered them to proceed separately. Likewise, in the interest of justice and to avoid unnecessary delays in the resolution of this appeal, we considered both appeal files.

The clerk's transcript for BV 033362 consists of six volumes with 1,326 pages and for BV 034226, three volumes with 639 pages and approximately 500 pages of exhibits designated under California Rules of Court, rule 8.843.

defendants were legitimate; all his applications and motions were proper and authorized; and the September 3, 2020 orders "should be void, because they were taken from a void judgment."

Plaintiff's attack on the order is global and fails to address the merits of each application, document or pleading that the trial court relied upon to support its finding. Moreover, plaintiff's brief is silent as to the specific reasons the trial court denied the various applications, motions and pleadings identified in its summary of the litigation. Instead, he simply states in conclusionary language that all his filings had merit and comported with procedure and law. Plaintiff failed to include in the record all the pleadings and motions and the orders determining them that are identified by the trial court in its findings. (*Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1412 ["We cannot presume error from an incomplete record"].)

As stated *ante*, we are required to presume the vexatious litigant finding and the concomitant orders requiring plaintiff to obtain a prefiling order and to post security are correct and to imply the findings necessary to support the orders. (*Goodrich v. Sierra Vista Regional medical Center, supra,* 246 Cal.App.4th at pp. 1265-1266.) "'It is the duty of an appellant to provide an adequate record to the court establishing error. Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.]' [Citation.] This principle stems from the well-established rule of appellate review that a judgment or order is presumed correct and the appellant has the burden of demonstrating prejudicial error. [Citations.] By failing to provide an adequate record, [an] appellant cannot meet his burden to show error and we must resolve any challenge to the order against him. [Citations.]" (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.) We cannot consider factual references in the parties' briefs that are not part of the appellate record. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.)

Also, the appealing party "must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority. [Citations.]" (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685.) "'This requires more than simply stating a bare assertion that the judgment, or part of it, is erroneous and leaving it to the appellate court to figure out why; it is not the appellate court's role to construct theories or

arguments that would undermine the judgment . . . .' [Citation.]" (*Lee v. Kim* (2019) 41 Cal.App.5th 705, 721.) Simply stated, it is not our function to act as counsel on appeal for plaintiff, and we decline to do so. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.) When a party presents an issue on appeal without citation to authority and a developed argument, we may deem the issue forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656.)

Plaintiff has not sustained his burden as the appealing party to overcome the presumption of correctness.

DISPOSITION

The order finding plaintiff to be a vexatious litigant and subject to a prefiling order and security posting is affirmed. Defendants shall recover costs on appeal.

P. McKay P. J.

We concur:

Kumar, J.

Ricciardulli, J.

APPENDIX C

CIV-130

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JAMES DEVITT, ESQ. #137097 JAY DEVIT LAW FIRM 10801 NATIONAL BOULEVARD, SUITE 403 LOS ANGELES, CA 90064 TELEPHONE NO.: 310 841-5900 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): ALEXANDER YERKES, MISTY THOMSON	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF L.A. STREET ADDRESS: 111 N HILL ST MAILING ADDRESS: LOS ANGELES, CA 90012 CITY AND ZIP CODE: BRANCH NAME: CENTRAL	
PLAINTIFF/PETITIONER: HAROUN BACCHUS DEFENDANT/RESPONDENT: ALEXANDER YERKES, MISTY THOMSON	
NOTICE OF ENTRY OF JUDGMENT OR ORDER *(Check one):* ☐ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☑ **LIMITED CASE** (Amount demanded was $25,000 or less)	CASE NUMBER: 15K00946

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: 12/17/2019

2. A copy of the judgment, decree, or order is attached to this notice.

Date: 12/27/2019

JAMES DEVITT
(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

James Devitt
(SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
CIV-130 [New January 1, 2010]

NOTICE OF ENTRY OF JUDGMENT OR ORDER

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UPERI O I SC PI TS FSCALOF I NOA,SC PNTYS FSL USANGRLRU

CivilSDivision

Central District, Stanley Mosk Courthouse, Department 54

15K00946
BACCHPU,SHAI PNSvsSTH MU N,SMOUTY

December 17, 2019
10:30 AM

Judge: Honorable Ernest M. Hiroshige
Judicial Assistant: S. Temblador
Courtroom Assistant: None

CSR: Electronically Recorded
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): HAROUN BACCHUS

For Defendant(s): James Ira Devitt

NATPI RS FSEI CRRDONGU:S Non-Jury Trial

The matter comes on for hearing.

Counsel and parties argue plaintiff's motions in limine 1 through 5.

The Court denies plaintiff's motions in limine based on the opposition papers.

Plaintiff and defendant give opening statements.

Plaintiff begins case in chief.

Haroun Bacchus is sworn and testifies on his own behalf.

Plaintiff HAROUN BACCHUS's exhibits 1 (list of property not owned by plaintiff), 4 (series of 208 photos), 5 (police report), and 7 (analysis of defendant's handwritting), Plaintiff HAROUN BACCHUS's exhibit 8 (video cassette recorder), and Defendant MISTY THOMSON and Defendant ALEXANDER YERKES's exhibit 51 (case summary of cases filed by plaintiff) are marked for identification only.

Plaintiff rests.

Defendant makes oral motion for judgment.

Plaintiff and defendant's counsel argue the motion.

The Court finds insufficient evidence to show any damages caused by defendants.

The Court grants defendant's motion for judgment.

15K00946
BACCHPU,SHAI PNSvsSTH MU N,SMOUTY

December 17, 2019
10:30 AM

Judge: Honorable Ernest M. Hiroshige
Judicial Assistant: S. Temblador
Courtroom Assistant: None

CSR: Electronically Recorded
ERM: None
Deputy Sheriff: None

Defendant to file and serve a proposed judgment in conformity with the Court's ruling.

Pursuant to stipulation and order signed and filed this date all exhibits marked for identification are returned to the offering party.

Notice is deemed waived.

APPENDIX D

S276245

IN THE SUPREME COURT OF CALIFORNIA

HAROUN BACCHUS, Petitioner,

v.

COURT OF APPEAL, SECOND APPELLATE DISTRICT, Respondent;

THOMSON MISTY et al., Real Parties in Interest.

The application of petitioner for leave to file a petition for writ of mandate is hereby denied.

CANTIL-SAKAUYE

Chief Justice

S276245

IN THE SUPREME COURT OF CALIFORNIA

HAROUN BACCHUS, Petitioner,

v.

COURT OF APPEAL, SECOND APPELLATE DISTRICT, Respondent;

MISTY THOMSON et al., Real Parties in Interest.

The order filed on September 21, 2022, denying the application for leave to file a petition for writ of mandate is hereby amended to reflect the above title.

CANTIL-SAKAUYE

Chief Justice

APPENDIX E

APPELLATE DIVISION OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

HAROUN BACCHUS, Plaintiff and Appellant, v. MISTY THOMSON AND ALEXANDER YERKES, Defendants and Respondents.	No. BV 033362 Central Trial Court No. 15K00946 **ORDER**

Appellant's petition for rehearing and application for certification to the Court of Appeal have been read and considered and are denied. The various "omissions" and "material misstatements" identified in appellant's petition for rehearing fails to distinguish between what evidence appellant presented during the trial and the numerous documents he filed during the history of the litigation. The application fails to demonstrate that certification is necessary to secure uniformity of decision or to settle an important question of law.

The court's opinion affirming the judgment was sent by the clerk to the parties by mail on February 9, 2022, and becomes final on March 11, 2022, which is also the last day for the

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court to rule on appellant's petition and application. Appellant's motion to augment was filed on February 24, 2022. Under California Rules of Court, rule 8.808(a)(3) and (b)(1), the court cannot rule on the motion until Monday, March 14, 2022, unless respondents file an opposition prior to March 14, 2022.

Respondents failed to file an opposition to the motion on, or prior to, March 11, 2022. Accordingly, and because appellant did not file his motion sooner, the court loses jurisdiction to rule on the motion after March 11, 2022.

P. McKay, P. J.

Kumar, J.

Ricciardulli, J.

APPENDIX F

CASE INFORMATION

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Case Number: BV034226

HAROUN BACCHUS VS MISTY THOMSON AND ALEXANDER YERKES

Filing Courthouse: Stanley Mosk Courthouse

Filing Date: 10/05/2020
Case Type: Appellate Division Appeal
Status: Judgment With Opinion 04/07/2022

Underlying Case-Appellate: 15K00946 on 10/05/2020

FUTURE HEARINGS

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

None

PARTY INFORMATION

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

BACCHUS HAROUN - Plaintiff/Appellant In Pro Per

THOMSON MISTY - Defendant

YERKES ALEXANDER - Defendant

DOCUMENTS FILED

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Documents Filed (Filing dates listed in descending order)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
09/16/2021

06/30/2022 Remittitur - Appellate
Filed by Clerk

04/26/2022 Order
Filed by Court

Petitioner recalls this order denied the Petition for Rehearing, but a copy is not available at this time.

04/22/2022 Motion to Augment
Filed by Plaintiff/Appellant

04/22/2022 Petition for Certification
Filed by Plaintiff/Appellant

04/22/2022 Petition for Rehearing
Filed by Plaintiff/Appellant

APPENDIX G

Appendix G
Relevant California Constitutional, Statutory, and Rule Provisions

STATUTES

CIVIL CODE - CIV

1708.8.
(a) A person is liable for physical invasion of privacy when the person knowingly enters onto the land or into the airspace above the land of another person without permission or otherwise commits a trespass in order to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity and the invasion occurs in a manner that is offensive to a reasonable person. Citation: BV 033362: (2 CT 302 - 303.)

3294.
(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.
Citation: BV033362: (2 CT 303.)

3333.
For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.
Citation: BV033362: (2 CT 304 - 306.)

3336.
The detriment caused by the wrongful conversion of personal property is presumed to be:

First—The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a

proper degree of prudence on his part would not have averted; and

Second—A fair compensation for the time and money properly expended in pursuit of the property.
Citation: BV033362: (2 CT 304 - 307.)

3379.
A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.
Citation: BV033362: (2 CT 307 - 308.)

3380
Section Thirty-three Hundred and Eighty. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.
Citation: BV033362: (2 CT 307 - 308.)

CODE OF CIVIL PROCEDURE - C.C.P.

128.7.
(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
Citation: BV 033362: (AOB at p. 15:2)

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the

order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.
Citation: BV 034226: (AOB at p. 27:1 - 6).

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

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

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

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
Citation: BV034226: (AOB at pp. 17, 21, 24.)

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

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

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve, or the presiding justice or presiding judge may direct the clerk to file and serve, on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the

filing of the litigation as set forth in subdivision (b). If the presiding justice or presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

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

(e) The presiding justice or presiding judge of a court may designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities provided under subdivisions (a) to (c), inclusive.

(f) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.
Citation: BV034226: (AOB at pp. 23, 24.)

473.
(b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. However, in the case of a judgment, dismissal, order, or other proceeding determining the ownership or right to possession of real or personal property, without extending the six-month period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, dismissal, order, or other proceeding has been taken, and upon his or her attorney of record, if any, notifying that party and his or her attorney of record, if any, that the order, judgment, dismissal, or other proceeding was taken against him or her and that any rights the party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of the notice, then the application shall be made within 90 days after service of the notice upon the defaulting party or his or her attorney of record, if any, whichever service shall be later. No affidavit or declaration of merits shall be required of the moving party. Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit

attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. However, this section shall not lengthen the time within which an action shall be brought to trial pursuant to Section 583.310.
Citation: BV033362: (Mot. New Trial (4 CT 829:27, 830, 831:1)

1008.
(a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.
Citation: BV033362: (AOB at pp. 14, 17, 35).

EVIDENCE CODE - EVID

1416.
A witness who is not otherwise qualified to testify as an expert may state his opinion whether a writing is in the handwriting of a supposed writer if the court finds that he has personal knowledge of the handwriting of the supposed writer. Such personal knowlegde may be acquired from:

(a) Having seen the supposed writer write;

(b) Having seen a writing purporting to be in the handwriting of the supposed writer and upon which the supposed writer has acted or been charged;

(c) Having received letters in the due course of mail purporting to be from the supposed writer in response to letters duly addressed and mailed by him to the supposed writer; or

(d) Any other means of obtaining personal knowledge of the handwriting of the supposed writer.

Citations: BV033362 (AOB at p. 31), (ARB at p. 18).

PENAL CODE - PEN

118.
(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.
Citation: BV033362: (2 CT 304 - 308.)

484.
(a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test, and in determining the value of services received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purposes of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employee or employees without advising each of them of every labor claim due

and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud.
Citation: BV033362: (2 CT 307 - 308.)

487.
Grand theft is theft committed in any of the following cases:

(a) When the money, labor, real property, or personal property taken is of a value exceeding nine hundred fifty dollars ($950), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars ($250).

(B) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars ($250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars ($250) in wholesale value.
Citation: BV033362: (2 CT 307 - 308.)

594.
(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive

inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more, vandalism is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars ($10,000) or more, by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.
Citation: BV033362: (2 CT 304 - 306.)

602.5.
(a) Every person other than a public officer or employee acting within the course and scope of his or her employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other residential place without consent of the owner, his or her agent, or the person in lawful possession thereof, is guilty of a misdemeanor.
Citation: BV033362: (2 CT 299 - 301.)

RULES

California Rules of Court

Rule 3.1202. Contents of Application
(a) Identification of attorney or party

An ex parte application must state the name, address, e-mail address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, e-mail address, and telephone number of the party if known to the applicant. (Subd (a) amended effective January 1, 2016.)

(b) Disclosure of previous applications

If an ex parte application has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, must include a full disclosure of all previous

applications and of the court's actions.

(c) Affirmative factual showing required

An applicant must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte.
Citation: BV033362: Opinion at p. 5:27 - 28).

Rule 8.882. Briefs by parties and amici curiae
(e) Service and filing

(1) Copies of each brief must be served as required by rule 8.817.

(2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.

(3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.

(4) A copy of each brief must be served on a public officer or agency when required by rule 8.817.
Citation: BV033362: (See ARB at p. 6:4 - 9; and Oral Argument appearance for objection on February 17, 2022).

CONSTITUTIONS

California Constitution

ARTICLE I DECLARATION OF RIGHTS [SECTION 1 - SEC. 32] (Article 1 adopted 1879.)
Citation: BV033362: (2 CT 302.)

SEC. 7.
(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the

Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this State may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Except as may be precluded by the Constitution of the United States, every existing judgment, decree, writ, or other order of a court of this State, whenever rendered, which includes provisions regarding pupil school assignment or pupil transportation, or which requires a plan including any such provisions shall, upon application to a court having jurisdiction by any interested person, be modified to conform to the provisions of this subdivision as amended, as applied to the facts which exist at the time of such modification.

In all actions or proceedings arising under or seeking application of the amendments to this subdivision proposed by the Legislature at its 1979–80 Regular Session, all courts, wherein such actions or proceedings are or may hereafter be pending, shall give such actions or proceedings first precedence over all other civil actions therein.

Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan after the effective date of this subdivision as amended.

In amending this subdivision, the Legislature and people of the State of California find and declare that this amendment is necessary to serve compelling public interests, including those of making the most effective use of the limited financial resources now and prospectively available to support public education, maximizing the educational opportunities and protecting the health and safety of all public school pupils, enhancing the ability of parents to participate in the educational process, preserving harmony and tranquility in this State and its public schools, preventing the waste of scarce fuel resources, and protecting the environment.

(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may

be altered or revoked.

(Subdivision (a) amended Nov. 6, 1979, by Prop. 1. Res.Ch. 18, 1979. Other Source: Entire Sec. 7 was added Nov. 5, 1974, by Prop. 7; Res.Ch. 90, 1974.)
Citation: BV033362: (AOB at pp. 21, 37.)

OTHER AUTHORITIES

§ 218 of the Restatement (Second) of Torts states that: One who commits a trespass to a chattel is subject to liability to the possessor of the chattel if, but only if, he dispossesses the other of the chattel, or the chattel is impaired as to its condition, quality, or value or the possessor is deprived of the use of the chattel for a substantial time, or
bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.
Citation: BV 033362: (2 CT 299 - 301.)

§ 222A of the Restatement (Second) of Torts states that:
(1) Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.
(2) In determining the seriousness of the interference and the justice of requiring the actor to pay the full value,
the following factors are important:
(a) the extent and duration of the actor's exercise of dominion or control;
(b) the actor's intent to assert a right in fact inconsistent with the other's right of control;
(c) the actor's good faith;
(d) the extent and duration of the resulting interference with the other's right of control;
(e) the harm done to the chattel;
(f) the inconvenience and expense caused to the other
Citation: BV 033362: (2 CT 299 - 300.)

Restatement of the Law, Second, Torts, § 652
§ 652B Intrusion Upon Seclusion
One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.
Citation: BV 033362: (2 CT 302 - 303.)

APPENDIX H

Appendix H

(1) Case No. S276245: In the Supreme Court of California, Petition for Peremptory Writ of Mandate, or Other Extraordinary Relief; Memorandum of Points and Authorities; Supporting Exhibits (Filed Under Separate Cover) dated August 25, 2022, filed September 21 and 26 of 2022.

A writ of mandate petition is an original proceeding, which means that an appellate court has discretion where equitable principles apply to consider additional evidence not presented in the court below or that is outside the record. (See Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2012) [¶] 15:179.1 (rev. #1, 2011); *Bruce v. Gregory* (1967) 65 Cal.2d 666, 671 – 672.); *Mc-Carthy v. Superior Court* (1987) 191 Cal.App.3d 1023, 1030, fn. 3). Similarly, a motion for new trial permits additional evidence for admittance at trial.

(2) Case No. B321216: In the Court of Appeal of the State of California, Second Appellate District, Division P, Petition for Peremptory Writ of Mandate, or Other Extraordinary Relief; Memorandum of Points and Authorities; Supporting Exhibits (Filed Under Separate Cover) dated June 28, 2022, filed June 30, 2022.

(3) Included in the writ of mandate under (2) above is the additional theft (Incident No. 22-11687 dtd. February 06, 2022, Supporting Exhibit 12).

Discovery of an additional theft (conversion) of petitioner's property occurred on January 16, 2022 (Incident No. 22-11687 dtd. February 06, 2022), (App. H at p. 1 [¶](2); Supp. Exh. 12). On February 06, 2022, petitioner met Ofc. Buonarati #4069 at the Santa Monica Police Station regarding this incident involving the fifth repeated theft (conversion) greater than $4,400 of petitioner's personal property of mostly audio and musical components valued in the thousands of dollars at his permanent residence on 3rd. Street in Santa Monica, California even after the door lock was changed in the summer of 2018. Respondents used a lock picking device to gain entry into Ms. Thomson's room in 2007 when she locked herself out (Case No. BV033362: 4 CT at p.829:16 – 27), and must be repeatedly defeating petitioner's door locks using the same device, because no forced entry to petitioner's bedroom door has been discovered. In November, 2022 the highest enforcement response was received by the District Attorney's Office which provided prosecution guidance for recovery, but there was no response from the City Mayor's Office after a follow up in December, 2022.

Respondent Ms. Thomson, co - tenant, testified on January 12, 2022 at the Santa

Monica Courthouse in Case No. BC672129 that (1) petitioner's bedroom was empty and that (2) "we" (she and spouse, Alexander Yerkes) don't go in there. While waiting for police to arrive on February 06, 2022, respondent Mr. Yerkes asked petitioner if he was "here [at the corner of 3rd. St. and Pacific Ave.] to clean up his room." New photographs taken on January 16, 2022 in the presence of a witness of petitioner's bedroom which has a connected restroom show that petitioner's room is not empty. That means they defeated the new door lock, and were unlawfully in petitioner's room and committed theft (conversion) (Mot. New Trial (CT 4 829:16 – 19)), (App. H at p. 1 [¶](4) a.). Petitioner demands immediate return of his property from the respondents (App. H at p. 1 [¶](2); Vol. 3, Supp. Exh. 12). The respondents do not deny anywhere in their briefs that they are the perpetrators in the actions based on the preponderance test which supports that the evidence is convincing of their liability. As measurable, the test means that at least fifty – one percent (51%) probability that they caused the harm petitioner complained of.

(4) a. Case No. BV033362: Memorandum of Points and Authorities in Support of Plaintiff's Motion for New Trial; Declaration of Haroun Bacchus; Exhibit; [Proposed] Order [C.C.P. §§ 656 & 657] (4 CT 829:27, 830:1 – 5); [Application for C.C.P. § 473 relief is supported], filed January 21, 2020.

b. Case No. BV033362: Minute Order (3 CT 718.)

c. Case No. BV033362: Notice of Motion and Motion to Augment the Record on Appeal; Memorandum of Points and Authorities; Declaration of Appellant in Support of Motion and Re Notice at p. 2, filed February 24, 2022.

d. Case No. BV033362: Order at p. 2:5 – 7., filed March 11, 2022.

The order states the court lost jurisdiction to rule on the augmentation motion.

(5) Case No. BV033362: (*Ibid.* Motion for New Trial at p. 826 [¶] [¶] 1 – 2, 4; at p. 827:27; at p. 828:1 – 6; at p. 829:19 – 22, 27; at pp. 830 – 832.; at p. 834[¶] 5.; at p. 835).

If all the photographs and handwriting evidence introduced at trial would have been considered, the preponderance of this evidence would have led to a result where petitioner would have prevailed at trial.

(6) Case No. BV033362: Respondents' handwriting evidence. (*Ibid.* Motion for New Trial at p. 826 [¶] [¶] 1 – 2, 4; at p. 827:27; at p. 828:1 – 6; at p. 829:19 – 22, 27; at pp. 830 – 832.; at p. 834[¶] 5.; at p. 835).

These mail pieces were delivered to petitioner through the U.S. postal system after the December 17, 2019 trial date and were not available to be presented to the court. Collectively, they show that respondent Mr. Yerkes' handwriting matches his handwriting on the post – it that is attached to his Panasonic VHS recording device, and defamation directed to the addressee. The flash box has handwriting on it which petitioner matched to the handwriting of respondent Ms. Thomson.

(7) Case No. BV033362: Other Evidence For Purposes of Impeachment. (*Ibid.* Motion for New Trial at p. 826 [¶] [¶] 1 – 2, 4; at p. 827:27; at p. 828:1 – 6; at p. 829:19 – 22, 27; at pp. 830 – 832.; at p. 834[¶] 5.; at p. 835).

Respondents' Property Discovered in Petitioner's Bedroom:

The respondents' wireless home phone and flash box (see Form Interrogatories – Limited Civil Cases (Econ. Litigation), Answering Party: Misty Thomson, Resp., color photographs No. CLR 04 Panasonic Wireless Home Telephone, and No. CLR 36 Camera Flash Box) were litigated at trial and should be included as exhibits.

(Ibid. See also Form Interrogatories – Limited Civil Cases (Econ. Litigation), Answering Party: Misty Thomson, Resp., color photograph No. CLR 02 Brown Wood Dresser compared to (see Lodged Trial Exhibit Binder, Fed Ex Envelope: Bring Your Photos to Life attached to back flap of binder) Sheet A). The finding is that the respondents' dresser in the living room of the apartment was moved to petitioner's bedroom through a locked door.

Similarly, color photograph No. CLR 03 Bedding and Linen compared to Sheet E is a finding that the real parties' bedding and linen in the living room was moved to petitioner's bedroom through a locked door. Next, photograph No. CLR 05 Pieces of Wood over 5' in length compared to Sheet B is a finding that the respondents' wood pieces were moved to petitioner's bedroom through a locked door. Photograph CLR 10 Purple Crates compared to Sheet D (purple crate in under respondents' table) is a finding that the respondents' purple crates were thrown into petitioner's bedroom through a locked door. A brown end table is owned by the apartment as shown in Sheet F which has the respondents' television placed on it. Compare sheet F to photograph No. 167 in the trial exhibit binder under tab 2, and the finding is that the respondents' threw this end table into petitioner's bedroom through a locked door. All of the above photographic impeachment evidence was excluded at trial.

The additional evidence is also shown in an index of exhibits (4 CT 968 - 969), and exhibits provided in the complaint (2 CT 319 - 441). In the trial binder, all of the

discovery documents are provided evidentiary and impeachment purposes. Included are the Requests for Admissions and responses for both respondents, the Form and Special Interrogatories and responses to them, and the Inspection/Production Demand that was not responded to.

Outside of the record, there is stolen U.S. postal mail that has been reported, which included stolen portfolio documents.

APPENDIX I

Appendix I

Article - Ex parte Motions. Author Judge Mark V. Mooney. Advocate, published July, 2020.

Judge Mark V. Mooney
LOS ANGELES SUPERIOR COURT

ADVOCATE
July 2020

Ex parte motions

WHAT A WAY TO START THE DAY: THE "8:30 WHINERS' CALENDAR"

It should hardly come as a surprise to anyone, but judges really don't like ex parte applications. We are required to review the motion in a short period of time, with limited information and often hearing only from one side. They are disruptive to the court's calendar. On any given day, a judge may already have hearings on four or five noticed motions, several Case Management Conferences, informal discover conferences and a need to review and prepare for the next day's calendar. On top of all that, a jury may be waiting in the hall to resume trial. Then five or six ex parte applications show up to impact an already full day. Most ex parte applications could have been avoided, are unnecessary, or denied. I've even heard one judge refer to them as the "8:30 whiners' calendar."

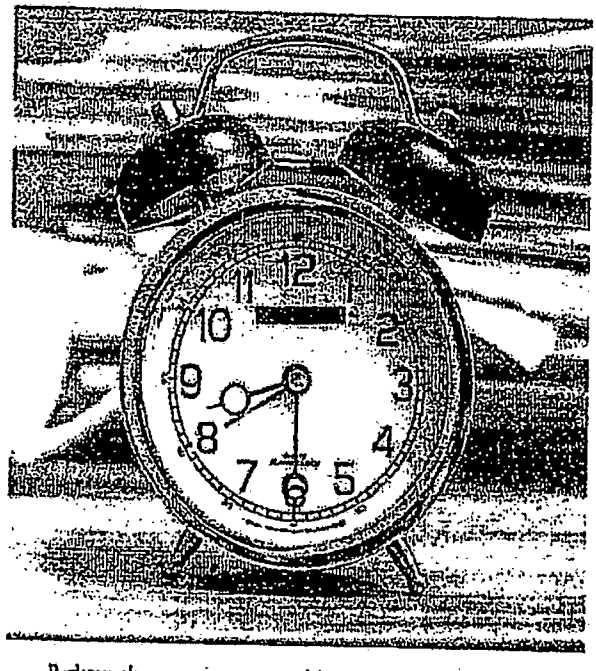
Since the Los Angeles Superior Court transitioned to eFiling, judges now have a slight "heads up" as to what to expect the next day. Ex parte applications need to be eFiled by 10:00 a.m. of the day before the hearing. That still provides only a limited time to consider the application. If there is written opposition, it may not be available to review until the morning of the hearing.

As we all adjust to the reopening of civil departments in this COVID-19 world, I suspect that there will be a flood of ex parte applications as parties try to get their cases back on track. Parties will file applications in an effort to reposition their place on the court's calendar. Some motions absolutely should be brought on an ex parte basis to protect your client's rights. Others, maybe not so much. In order to increase the likelihood of success on your ex parte application there are a few basic rules that litigants should keep in mind.

Make the ex parte application your last resort

Before you even consider filing an ex parte application, try to resolve the issue with opposing counsel first. I've had countless hearings where counsel for the party against whom ex parte motion is directed will start with, "If they had only asked me, I would have (fill in the blank)" or the opposing counsel may propose an acceptable compromise at the hearing. I appreciate that when attorneys are actually standing before a judge there is an effort by everyone to appear reasonable. Nevertheless, there are few issues that reasonable minds should not be able to resolve. Particularly at this time, civility and cooperation between counsel should be on a heightened level. Meet and confer. Stipulate to what you can. Narrow your issues. Rushing in to seek ex parte relief should always be a last resort.

If you are able to obtain an agreement with opposing counsel, you do not need to come in ex parte to obtain the court's blessing. Just file an executed stipulation with a proposed order. The goal is to reduce the number of appearances and items on the calendar. Don't come in on an ex parte if you don't need to.



Perhaps the most important thing to consider, is whether or not your application should be brought on an ex parte basis at all. There are a number of provisions for which ex parte relief is expressly authorized. These would include matters such as a request to seek appointment of a receiver (California rule of Court 3.1173); to allow the filing of longer memorandum of points and authorities to support or oppose a motion (California rule of Court 3.1113(e)); to request dismissal for failure to timely file an amended complaint after a demurrer has been sustained with leave to amend (Code of Civ. Proc., § 581(f)(2).

Exigent circumstances

If ex parte relief is not expressly authorized by statute, your application must explain exactly what the exigent circumstances are that make ex parte relief appropriate. In other words, what is the threat of irreparable harm or immediate danger that your client faces? If your request can be addressed in a properly noticed motion, you will need to have some very compelling reasons why your substantive motion should jump to the front of the line and be considered by the court. Otherwise, your application is likely to be denied based upon a lack of exigent circumstances.

So, what constitutes an exigent circumstance? That may mean different things to different people. Severe inconvenience

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does not equate to an emergency. The fact that the litigation is costing your client a great deal of money will rarely qualify as an exigent circumstance. But, for example, if evidence or property will be destroyed, or a witness permanently unavailable if the court does not act, exigency will likely be found.

Laying out a concise argument is always good practice. It is even more so on an ex parte application. Tell me, exactly what you want and why you need to have this decided now. Please do not hog down your application with a litany of the opposing side's past abuses. Give me only what is necessary to put the current dispute in context. There is only limited time to address the immediate issue that brings you before the court. The better you are able to focus your argument, the better a judge is able to focus attention on your application.

Speaking of keeping your argument concise, parties often submit far more exhibits and attachments than are necessary for the court to make a ruling. Somewhere along the line it seems that attorneys came to believe that the more paper you filed with a motion, the more likely the judge will find it meritorious. Ex parte applications are frequently filed with several inches of exhibits attached (or now electronically filed). Given the limited time available to review the application, I sometimes wonder if the attorney even considered how much time it will take to review the 100-plus pages of attachments. I also wonder if the attorney filing the application has even reviewed 100-plus pages. When I see that much paperwork attached to an ex parte application, my first reaction is generally that there appears to be far too much involved to decide any substantive issues on an ex parte basis.

Not all judges allow oral arguments on ex parte applications. It may be decided on the papers alone. You may have no opportunity to address the court regarding the application. This makes it all the more important that your papers be clear, succinct and to the point. It is also a reason to appear remotely for the hearing on the ex parte (at least currently and for the foreseeable future).

Once you have established that an exigent circumstance exists, step back and consider what action you would like the court to take. Because of the one-sided nature of an ex parte application and the obvious due process concerns, only limited forms of relief are available ex parte. Be aware of what a court can or cannot do on an ex parte application. If the code requires something be heard as a noticed motion (such as a motion to amend a complaint after a demur has been sustained), the judge cannot grant your request for relief on ex parte basis. If the relief sought would affect on an opposing party's rights, a noticed motion will be required. (See, *Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th 199, 207.) Under such circumstances, all you should be asking the court for is an Order Shortening Time to have your motion heard on less than statutory notice. The court is not likely to rule on your substantive motion at the ex parte hearing.

Don't even ask

There are things a judge cannot grant. For example, a judge cannot shorten notice requirements for a hearing for a motion for Summary Judgement or Summary Adjudication, so please don't ask for it. And yet, some attorneys still do.

Often ex parte applications are brought to enforce a settlement. Be aware that unless the settlement agreement provides for enforcement on an ex parte basis, the court will not consider it. Once the case has been dismissed, the settlement agreement must contain a reservation under Code of Civil Procedure section 664.6 for the court to retain jurisdiction and the court must have agreed to do so on the record. Otherwise, the court is without jurisdiction to consider the matter. If you are bringing an ex parte application to enforce a settlement, make sure you include a declaration and the proper documentation to show the court it can even hear the matter.

By far the most frequent use of ex parte applications is when there is a trial date fast approaching. Suddenly, a variety of discovery or other law motion issues become exigent. I once saw a small plaque on a judicial assistant's desk that sums up this situation perfectly. It read: "Lack of planning on your part, does not constitute an emergency on our part."

It amazes me how often a party's request for ex parte relief is brought *after* the close of discovery or *after* a motion cut-off date. If a party has timely filed a motion, but cannot obtain a hearing date before trial, that is an entirely different matter. The court's online reservation system or congested calendar may prevent your otherwise timely filed motion from being heard before the trial date, then an ex parte application is the appropriate mechanism to bring the issue to the court's attention. On the other hand, if you missed a date, mis-calendared or made an incorrect assumption, many judges will say, "I'm sorry but that problem is on you." If the emergency is of your creation, it will remain your emergency.

Conclusion

Of course, things happen in the course of litigation that are unexpected and beyond anyone's control. There are personal, professional, and public emergencies. When such emergencies arise, it may become necessary to act quickly to protect your client's rights. As we all struggle through this pandemic, the goals reducing court appearances and the load on the court have taken on a greater importance. Now more than ever I would hope that attorneys fully explore all avenues to resolve their issues prior to seeking court intervention. Sometimes that is just not possible and an ex parte application is your only recourse. Judges may not like ex parte applications, but we do like seeing that justice is done.

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Hon. Mark Mooney received his undergraduate degree from the University of Southern California in 1978. He attended law school at Southern Methodist University and received his Juris Doctor in 1981. Before being appointed to the bench he was an associate with firms of Hillsinger & Costanzo and Lafollette, Johnson, De Haas & Fesler. He also served as an Assistant United States Attorney for the Central District of California from 1991 to 1995. Judge Mooney was appointed to the Los Angeles Municipal Court by Governor Pete Wilson in 1995. In 1998, he was elevated to the Superior Court for the County of Los Angeles. He currently has an unlimited general civil assignment in the Mask Courthouse.

APPENDIX J

Appendix J

Citations Applicable to Aplt. Case No. BV033326

In the Motion for New Trial, petitioner provides a description of the defense's misconduct during the scheduled hearings and trial, and in other relevant matters (Mot. New Trial at p. 828:6 – 13, [¶] (6), at p. 832 - 5), (App. H at p. 1 [¶](4)a.). There have been missed appearances by the respondents early in this case, because they were evasive to service of process, and petitioner sought to notify them of the court hearings. Their conduct of evasiveness of the Sheriff's Dept., and private process servers continued for years and interrupted the collection of a judgment against respondent Ms. Thomson in Case No. 14K03029, which shows that she is dishonest. Further, her filing of the restraining orders were ultimately determined to be a **hoax** by the court (AOB at p. 34 [¶] 3, at p. 35:1 – 5).

On March 11, 2020, the court clerk intervened to prevent respondent Mr. Yerkes' theft of petitioner's financial documents (AOB at p. 9 [¶] 1). Moreover, harassment against the petitioner occurred on that same day before respondent Mr. Yerkes left Dept. 54 and used obscene language. Then, harassment and stalking occurred on September 14, 2020 at the Spring Street Courthouse, Dept. 26 on federal property with him using obscene language while petitioner waited for the elevator. In the interim, all obscene text messages directed to the petitioner in this case have been reported to the Federal Trade Commission (F.T.C.) #132714508, April 03, 2021 and in the relevant court filings. U.S. Postal Inspection Reports from June 25, 2020 through February 08, 2021 were generated to include the defamation appearing on U.S. postal mail pieces addressed to petitioner. A cease and desist letter was delivered to him on April 05, 2021.

The following citations show the frequency of the respondents' misconduct: (AOB at p. 9 [¶] 1; at 13:10 - 14; at p. 14:23; at p. 15:1 - 4; at p.16:11 - 14; at p. 17:20 - 21; at p. 18:1 - 3; at p. 19:1 - 4, [¶][¶] 1 - 2; at p. 20:22 - 23; at p. 21:1 - 4), (ARB at p. 9:[¶] 2; at p. 12:16 - 17; at p. 13:6,[¶] 2; at p. 14:1 - 9; at p. 17:3 - 5; at p. 19:1 - 3).

Citations Applicable to Aplt. Case No. BV034226

The litigation of the defense lacks merit and they are engaging solely for the sake of harassment and delay.

The following citations show the frequency of the respondents' misconduct: (AOB

at p. 17[¶][¶] 1 - 2; at p. 20:9 -14; at p. 25: [¶] 1), (ARB at p. 7[¶] 3; at p. 8:1 - 5, [¶] 3; at p. 9:1 - 5, [¶][¶] 2 - 3; at p.11 [¶] 3; at p. 12:10 - 11; at p. 13 [¶][¶] 3- 4; at p. 14:1 - 3).

APPENDIX K

Appendix K

National Problem of Significance - Remedy Proposed

To reduce housing costs throughout the United States there is a large population who opt to share residences. Petitioner reduced his rental expenses for the apartment in Santa Monica, California by accepting respondent, Ms. Thomson, as a co-tenant, but realized after she filed false restraining orders, and committed repeated property damage and theft that litigation was necessary for recovery.

Federal Bureau of Investigation ("F.B.I.") statistics show an increase in residential property damage and theft of 42, 432 incidents in 2021 from year 2020 which had 33,112 incidences nationwide (source: Federal Bureau of Investigation, Crime Data Explorer, Category, Destruction/Damage/Vandalism of Property). Such unlawfulness affects communities where people live.

On August 12, 2016 petitioner succeeded in dissolving those orders which had been unlawfully renewed. Petitioner was harmed for over a decade by her unlawful acts, even though petitioner presented the perjury matter to the court and District Attorney's Office, and sought assistance from the City Mayor for the additional theft, but no decisive action was taken (Case No. BC672129: Bacchus v. Thomson, Suppl. Decl. of Haroun Bacchus in Supp. of Amend. Vsn. for Sum. Judgmnt. / Adjud. Filed July 10, 2020 [C.C.P. §§ 473, 576] Filed Aug. 10, 2020, Vols. 1 - 5., filed Feb. 26, 2021), and (App. H at p. 1 [¶](3)).

If the Self-Help Center in the Santa Monica Courthouse in California could have assisted petitioner, and had an investigation been done at the time, all of the subsequent court proceedings since 2012 would not have been necessary, which would have prevented the waste of judicial resources and taxpayer monies.

Therefore, petitioner proposes new legislation to provide the Self-Help Centers in Courts throughout the United States to channel allegations of criminal activity directly to law enforcement to assist self - represented litigants. In doing so, the law enforcement could be put on immediate notice of the violation(s), and a quick resolution should follow which would prevent continuous fraudulent civil litigation.
