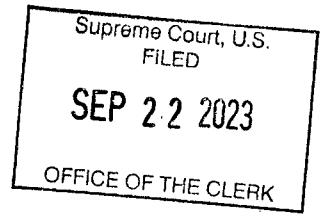


No. 23-319

---

IN THE  
**SUPREME COURT OF THE UNITED STATES**

---



**EVELYN NEWEY – PETITIONER PRO SE LITIGANT**

**VS.**

**COUNTY OF ORANGE, ET. AL – RESPONDENTS**

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**THE UNITED STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT**

**PETITION FOR WRIT OF CERTIORARI**

**EVELYN NEWEY  
PO BOX 1460  
LA CANADA FLINTRIDGE CA 91012  
aviatrixvn@proton.me  
650.505.3619**

## QUESTIONS PRESENTED

Of legal and national significance, important to real-world impact in law and order decision making, is the Peace Officers Decertification process allowing greater accountability for police conduct when on September 30, 2021, California signed SB-2, joining 46-other states leaving Hawaii, New Jersey and Rhode Island without a police decertification process; and, The Guide to Judicial Policy, Ch.2. Code of Conduct for U.S. Judges. Questions presented are,

1. Should the public expect police to be held accountable for decisions under all circumstances, verbal and/or in writing under penalty of perjury, behavior captured on Sheriff office CCTV, and in contrast to *Kansas v. Glover* No.18-556, 2020 LEXIS 2178?
2. Should an important consideration be, to investigate the district court's decisions that appear not just erroneous but outlandishly so, when that court's opinions suppressed facts and supporting evidence favorable to Plaintiff, the § 1983 claims denied based on the irrelevant *Heck* doctrine, and failure of the U.S. Magistrate Judge to self-recuse under 28 USC § 455(a) when a defendant, a client at her law firm, and which is similar and recurring to, *Housing is a Human Right v. County of Orange et al.*?
3. Should the court of appeals without notification to Appellant unilaterally decide to invoke Fed.R.Civ.P.21, absent "court order on motion of any party" or "of the court's own initiative", by removing a city defendant from their docket, when that city defendant appeared on the district court's docket, but who together dismissed Petitioner's action for jurisdiction?

## LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. The remaining parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

THE CITY OF DANA POINT – RESPONDENT  
VICTORIA DITRIH, AN INDIVIDUAL – RESPONDENT  
JONATHAN DARUVALA, AN INDIVIDUAL -  
RESPONDENT  
AND DOES 1-25, INCLUSIVE – RESPONDENTS

Respondents represented by:

Michelle R. Prescott, Esq,  
Wesierski and Zurek LLP.  
29 Orchard Road, Lake Forest, CA 92630.  
[mprescott@wzllp.com](mailto:mprescott@wzllp.com)  
Phone: 949.975.1000.

## RELATED CASES

*Evelyn Newey v. County of Orange, et al.* No. 30-2018  
00987743. Superior Court of CA County Orange. “Case dismissed with disposition of court ordered dismissal”. Entered May 13, 2019.

*Evelyn Newey v. The County of Orange; The City of Dana Point; Victoria Ditrih, an individual; Jonathan Daruvala, an individual; and Does 1-25 inclusive.* No. 8:18-cv-01118-DOC-KES. USDC CDCA “Motion to extend time or reopen the time to appeal is **denied**”. Entered July 12, 2023.  
(App.E.26a)

*Evelyn Newey v. County of Orange, et al.* No. 23-55499. US Court of Appeals for the Ninth Circuit. **DISMISSED**. “for lack of jurisdiction”. Entered June 29, 2023. (App.A-1a)

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	2
<b>STATEMENT OF THE CASE</b>	
Summary .....	3
1. Factual Background.....	3
2. Far Reaching Consequences .....	11
3. Daruvala Police Report .....	14
4. Petitioner Response to Daruvala Report.....	16
5. Relevant Procedural Background.....	19
6. The District Court Decisions .....	21
7. The Appeals Court Decisions.....	27
REASONS FOR GRANTING THE WRIT.....	28
CONCLUSION .....	31

## INDEX TO APPENDICES

APPENDIX A. Appellate Court Order, June 29, 2023. ....	1a
APPENDIX B. District Court Report & Recommendation, December 10, 2018. ....	2a
APPENDIX C. District Court Order, January 18, 2019.....	20a
APPENDIX D. District Court Report & Recommendation, June 16, 2023. ....	21a
APPENDIX E. District Court Order, July 11, 2023. ....	26a
APPENDIX F. Descriptions. Constitutional and Statutory Provisions Involved .....	27a

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Eastman v. Thompson</i> USDC CDCA	
No. 8:22-cv-00099-DOC-DFM	
Rep. 594 F. Supp. 3d 1156 *; 2022	
LEXIS 59283 **; 112 Fed.R. ....	27
<i>Eastman v. Thompson</i> USDC CDCA	
No. 8:22-cv-00099-DOC-DFM	
Rep. 2022 LEXIS 192764 * .....	27
<u>Cf. <i>Gaut v. Sunn.</i></u> 810 F.2d 923,925 (9 <sup>th</sup> Cir.1987) ....	5,11
<i>Kansas v. Glover</i> U.S. Supreme Court	
No. 18-556. Rep. 140 S. Ct. 1183 *;	
206 L. Ed. 2d 412 **; 2020 LEXIS 2178. ....	i,10
<i>Heck v. Humphrey</i> .....i,8,10,11,24,10a11a	
<i>Housing is a Human Right v. County of Orange</i>	
<i>Dana Point</i> ...Reassign.18-cv-00155-DOC-KES,	
p32,L12;p37,No.48. 02/28/2019. (Doc.1.) .....	i,9,16,21,26
<i>Ucci v. LAPD</i> 2:15-cv-08386-	
CAS-KES2020 LEXIS 8025 *; .....	5
<b>STATUTES AND RULES</b>	
18 U.S. Code § 242.....	2,3,14,21,26,28,27a
18 US Code § 1001.....	2,21,26,28,27a
18 US Code § 1503 .....	2,21,26,28,28a
18 U.S. Code § 1621,.....	2,3,14,21,26,28,28a
28 U.S. Code § 455(a).....	2,21,28,24a,28a
28 U.S. Code § 1746.....	3,14,17,19,21,26,28,28a
42 U.S. Code § 1983,.....	i,3,10,14,21,26,28,20a,11a
Fed.R.Civ.P.21.....	i,3
<b>OTHER</b>	
CA PC (1)(7)(5) .....	3,14,17,19
CA SB-2 Police Officers Decertification .....	i,3
Guide to Judicial Policy, Ch.2. ....	i,28

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix (“App.”) A-1a to the petition and is reported at 2023 U.S. App LEXIS 16541.

The opinion of the United States district court appears at Appendix B-2a to the petition and is reported at 2018 U.S. Dist. LEXIS 219533

The opinion of the United States district court appears at Appendix C-20a to the petition and is reported at 2019 U.S. Dist. LEXIS 9387.

The opinion of the United States district court appears at Appendix D-21a to the petition and unreported.

The opinion of the United States district court appears at Appendix E-26a to the petition and unreported.

**JURISDICTION**

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 29, 2023.

No petition for rehearing was timely filed in my case for the following reasons;

**District Court CDCA**

Plaintiff’s “Motion for Leave to File Notice of Appeal and Extension of Time, and Points and Authorities Combined

with Filed Notice of Appeal". Entered June 6, 2023; "Report and Recommendation of U.S. Magistrate Judge". Entered June 16, 2023. (App.C-20a); "Order Accepting Report and Recommendation of U.S. Magistrate Judge. Plaintiff's motion to extend or reopen the time to appeal (Dkt.73) is **denied**". Entered July 12, 2023. (App.E-26a)

### **Court of Appeals**

ORDER. Before Circuit Judges B. Silverman, R. Nelson, and P. Bumatay **DISMISSED** "Lack of jurisdiction". Entered June 29, 2023. (App.A-1a); Appellant "Objections to Report and Recommendation of U.S. Magistrate Judge". Case dismissed. Entered July 6, 2023; **MANDATE** Entered July 21, 2023; Appellant's "Motion to Reconsider Order Accepting Report and Recommendation of U.S. Magistrate Judge". Case dismissed and Mandate issued. Entered July 27, 2023; Appellant "Opening Brief" Major deficiency: case is closed. Entered on July 31, 2023.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

18 U.S. Code § 242 - Deprivation of rights under color law.

18 US Code § 1001. "Statements or entries generally". ..., within the jurisdiction of ..., or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up ... (2) makes any materially false, fictitious, or fraudulent statement or representation;

18 US Code § 1503. "Influencing ... generally"

18 U.S. Code § 1621 - Perjury generally.

28 US Code § 455(a). Disqualification of justice, judge, or magistrate judge. (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned",

28 U.S. Code § 1746 - Unsworn declarations under penalty of perjury (2)

42 U.S. Code § 1983. Civil Action for Deprivation of Rights  
Fed.R.Civ.P.21 “parties may be dropped or added by court order on motion of any party or of the court's own initiative”  
**State**

CA PC § 96.5(a) “Obstruction of Justice by Judicial Officer”  
CA PC (I)(7)(5) “Perjury and Subornation of Perjury 118.1.”

“a California traffic citation is considered an “arrest” for which an officer must have probable cause. Id., at 1498 (citing Cal. Pen. Code § 853.5.)” (App.B-9a)

## **STATEMENT OF THE CASE**

### **Summary**

### **18 USC§242;18 USC§1621;42 USC§1983 “CAPC(1)(7)(5).**

The case arose out of law enforcement conduct not experienced by Plaintiff since California driver's license issued in 1966. Two-Orange County Sheriff's Dept. Deputies, contracted to City of Dana Point. Sheriff II Victoria M. Ditrih, #9116 (“Ditrih”) [aka Victoria M. Vegas] and Sergeant Jonathan T. Daruvala, #3615 (“Daruvala”).

Under color law the Deputies, who were never forced into a ‘split second decision’ nor threatened or required to issue any warning, caused irreversible harm, loss of real estate livelihood, earnings capacity, future earnings, reputation, criminal record and far-reaching consequences. Abusing their authority by filing reports with their agency, the courts and the Department of Motor Vehicles (DMV) that placed Plaintiff in a false and denigrating light but who were shielded from accountability by reason of, *Newey v. County of Orange*, “And the alleged conduct is protected by qualified immunity”. 2019 LEXIS 57041.

The 47-States’ Police Decertification process including subsequent September, 2021, California SB-2, should prove useful as to departmental decision-making.

### **1. Factual Background**

On March 17, 2017. Plaintiff, solely dependent upon social security, offered and she accepted an opportunity to return to her vehicle-intensive self-employed real estate profession as a Realtor®/Associate Broker with an international agency. Relocating to County of Orange, CA.

On April 1, 2017. While driving southbound lane on undivided section of Pacific Coast Highway through Dana Point Plaintiff observed police car parked diagonally.

Cautiously maneuvering left rear corner of that police car, still in southbound lane, she heard a female voice from behind her shout “you nearly hit me”. Plaintiff stopped turned her head around and observed Ditrih with hand on Plaintiff trunk. Plaintiff not reckless, not dui, did not cause any bodily harm nor any property damage. No one directing traffic, no ambulances, fire trucks, horns, bells, whistles or emergency noises.

Google color visual location ‘stop’ (Dkt.73. Exhibit 1)

Ditrih issued CVC 21806(a)(1) “Fail to Yield” but failed to disclose breach of law by “an arresting or citing officer”. Plaintiff later discovered irrelevant to the ‘stop’,

“21806(a)(1). Upon the immediate approach of an authorized emergency vehicle which is sounding a siren .... (Dkt.1-2/16)

“a California traffic citation is considered an “arrest” for which an officer must have probable cause”. (App.B-9a)

Ditrih simultaneously issued DMV Notice of Priority Re-examination of Driver (Driver Incapacity), with allegations therein, if true, would cause a catastrophic if not fatal event at 6.02pm on a warm Saturday with tourists, locals and business travelers about. (Dkt.1-2/18)

Allegations therein: Responding incorrectly to emergency signal lights, caused or nearly caused collision, driving in wrong lane, failed to yield right of way;

Confused by traffic;

All lanes closed due to collis[i]on with police car w/flashing lights blocking all lanes. Driver drove into

opposing lanes of traffic (double yellow) almost striking officer".

Due to the absence of a motorist signature line in that DMV form, Ditrih not only failed to disclose that Notice and the allegations therein but had bundled the "Pink: Driver" copy within citation, license, registration and insurance tossed into Plaintiff car. After leaving the scene Plaintiff discovered that Notice, if not acted upon immediately, would cause a suspension.

Throughout 'traffic stop', fully-armed age-20+ Ditrih shouted commands. Her repeated shouting threat of violence to the unarmed compliant older Plaintiff sat in car and which continued upon leaving the scene. Causing extreme anxiety. ("... Ditrih shouting at her, which is not excessive force as a matter of law. *Cf. Gaut v. Sunn*; (App.B.10a-11a)".

In claims of police "shouting", Magistrate Judge (KES) alleges *Gaut* as a recurring defense in her similar cases when Plaintiff is Pro Se and defendants law enforcement, *UCCI v. LAPD*,

"see also *Newey v. Cty. of Orange*, No.CV 18-1118-DOC-KES, ... citing *Gaut v. Sunn*, (holding that a police officer "shouting . . . is not excessive force as a matter of law"). 2:15-cv-08386-CAS-KES. 2020 LEXIS 8025, p15,

"Shouting" relevant to circumstances. Age, physical, mental and emotional fear of an unarmed, compliant older motorist when confronted by one or more younger, physically fit but unpredictable fully-armed officers.

There is no question Ditrih violated Plaintiff's Fourth Amendment Rights. Her constant shouting, her failure to interpret beach of law 'by arresting officer in Orange County, CVC.21806(a)(1) irrelevant to the 'traffic stop' and, no motorist signature line in that serious DMV Notice enabled her to covertly fabricate reports she signed

“under penalty of perjury” filed with her agency, the courts and the DMV and which caused DMV Suspension, loss of real-estate livelihood, earnings capacity, reputation.

That same evening on April 1, 2017, Plaintiff conversed by phone with Sergeant Grayson at Sheriff’s HQ. Grayson had urged a talk with Ditrih but Plaintiff advised she would have to disclose that DMV Notice to her Manager. Grayson responded, “you don’t have to tell your Manager”. She replied “I do”.

Grayson abruptly shut down the call. He had expected Plaintiff to conceal her serious road violation from Manager of a real estate agency that holds its agents to highest standards of road safety when showing property and would also impact her Real Estate License.

On April 3, 2017. Due to Grayson abrupt disconnect, Plaintiff visited Dana Point Sheriff office to file in-person complaint and her first encounter with Daruvala who had, by admittance in his Report, “knew” of her complaint to Grayson. Such that when she advised him of Ditrih “unhinged” [volatile] conduct he turned away and retreated to his back office. Absent all verbal contact. Captured on Sheriff office CCTV Surveillance cameras (“CCTV”).

On April 4, 2017. That serious DMV Notice required motorist to attend, within five days of issuance, a DMV Hearing Office. Plaintiff passed written tests; her doctor issued clean Report. DMV scheduled road test 2-days later.

On April 6, 2017. Plaintiff appeared at DMV San Clemente field office. ‘Specials’ required to drive freeway. Due to \$230 million retrofit at that time, advised by large orange warning signs on PCH to SB-I5 and her vehicle-intensive livelihood at risk, she exercised caution but while on uneven single lane hairpin bend with concrete barriers, Examiner Queen raised his voice “55, 55, 55, 55” and a fail.

Within five-days of that road test, DMV issued Suspension: “Effective April 11, 2017”. Due to “Your driving

test" and "**Your law enforcement** (Ditrih) encounter on or around 4/1/2017". (Dkt.1-2/53)

On April 10, 2017. DMV erred by mailing that Suspension one-day before that "effective" date of "April 11, 2017". DMV envelope postmarked two places, 04/10/2017. (Dkt.1-2/51)

On April 11, 2017. Suspension "effective" date. Received same morning in Plaintiff Dana Point pobox. Unaware driving on a suspended license that caused sudden halt to her vehicle-intensive self-employed real estate livelihood, earnings capacity and her temporary housing/camping to conserve savings during relocation.

Plaintiff immediately drove to nearby DMV San Clemente field office where Manager, Rosa, directed her to DMV Hearing Office, Santa Ana, but too far and too risky on suspended license.

Due to the violations issued from Dana Point Sheriff, Plaintiff then drove to that office to seek guidance for the abrupt halt to her livelihood, earnings capacity and her camping, which was a mistake. Once there, she requested a meeting with Lieut. Chilton through the two-male reception volunteers. But Daruvala observed her arrival on CCTV, heard her request and entered Reception. Shaking his head at volunteers in denial. Anne Cooper, Sheriff HQ, advised Plaintiff it was her right to meet with the Lieut.

In good conscience and honorable intentions, having forgotten her previous contact with him, she verbally advised "I have a Suspension" ready to present DMV envelope. But he again turned around and retreated to his back office. Leaving her helpless and with no others on duty she had no choice but to leave. At no time Daruvala conversed or witnessed the Envelope or Suspension therein. Captured on CCTV.

His Report admits, "at approximately 1140 hours ... Newey came to city hall".

Upon leaving, she captured photo of desk plaque “So.Ops.Statement”, timed 11.45am. Her Sheriff office visit a mere five minutes. Witnessed by volunteers, CCTV. (Dkt.1-2/56; Color photo at Dkt.73. Exhibit 3.)

Once in her car, Plaintiff observed Daruvala behind her in his police car parked adjacent to the wall. Causing uneasiness. Captured on CCTV.

But with nowhere to go and no-one to turn to in a strange city and county of 2-weeks and on the parking lot of a police department she could no longer trust, Plaintiff decided to assess her options on adjacent residential street.

Trailing Plaintiff and at threshold to Sheriff parking lot, Daruvala applied lights, she complied. Captured CCTV. (Google color visual location at Dkt.73. Exhibit 2)

He stated “you have a Suspension”. Followed by three investigatory questions “Where is your family, friends and where do you live”. Ordered Plaintiff to sit outside. Where she sat on curb throughout ordeal.

After extensive background check, Daruvala confiscated Plaintiff driver’s license, impounded her car failing to disclose or provide any documentation of its whereabouts, and issued Misdemeanor failing to disclose consequences, that in California, carries up to one-year jail time, up to \$1,000 fine, probation and criminal record. (Dkt.1-2/58, 60),

Ordered two Dana Point police cars, parked in opposite directions outside Sheriff office, to surround her while sat on curb. Captured on CCTV. (Plaintiff sat on curb captured photo of cars, timed 12.25pm. Dkt.1-2/62; Color photo at Dkt.73. Exhibit 4).

One fully-armed male officer standing menacingly directly over her ready “use of lethal force” should she attempt movement to relieve pain from left knee surgery.

Having achieved settlement, ie. in his Report he wrongly admits “Newey ... came to city hall to complain

about a traffic stop by Deputy Ditrih", he, the two Dana Point police cars and officers left the scene leaving unarmed 75-yo female stranded on curb vulnerable to Dana Point's homeless population. Their conduct caused extreme anxiety, exhaustion, helplessness. *Housing is a Human Right v. County of Orange, ..Dana Point ...* DOC-KES

"DOC-KES" the same jurists who one-month prior to *Housing* issued Plaintiff Order and Judgment. Fully aware Dana's Point homeless situation. (App.B-2a; App.C-20a).

Daruvala fully aware, from his three questions upon 'stop' while sat in her car, Plaintiff had no-where to go and no one to turn to in a homeless community he had "served" 16-years. Yet, in last paragraph of his Report he pretended he 'suddenly' became aware her of housing.

Daruvala and his actions in Sheriff office on Sheriff parking lot and on adjacent residential street outside Sheriff office with those of his back-up squad, captured on Dana Point Sheriff office CCTV Surveillance Cameras.

It is likely Daruvala arrange to 'lose' that CCTV evidence. As a defendant in a prior lawsuit No. 8:08-cv-01203-CJE-E, Plaintiffs' attorneys repeatedly failed to retrieve clients 'missing' tapes. (SAC ¶ 118).

Two unknown witnesses to police conduct rescued distraught Plaintiff. Captured two-photos, timed 12.41pm, of her still sat on curb where ordered and where Daruvala had thrown her laptop and purses. (Dkt.1-2/63-64; Color photos at Dkt.73. Exhibits 5-6).

One witness offered to locate suitable housing driving her that afternoon to various shelters. The last stop a run-down church when she asked to be taken to a safe haven Marriott with no choice but to stay there almost until return of driver's license on July 14, 2017. Depleting savings more than \$11,000.00 held for permanent housing in her new location. (SAC Prayer No. 7.)

There is no question Daruvala violated Plaintiff's

Fourth Amendment Rights. Plaintiff had voluntarily visited his Sheriff Office to advise of her sudden DMV Suspension but allowed her to leave for reasons known only to him. confiscated her license, impounding her car, issued a Misdemeanor, causing a criminal record and leaving her on the curb knowing she had nowhere to go and no one to turn to. Contrary to circumstances in *Kansas v. Glover*.

On that same day of April 11, 2017. Plaintiff had also received Ditrih “Notice of Correction” CVC 21806(a)(1) changed to CVC 21460(a) “crossed yellow lines”, to support allegations in that DMV Notice. (Dkt.1-2/49)

**“Plaintiff’s § 1983 Claims against Defendant Ditrih”.**  
(App.B-10a).

Wherein, the District court decided Plaintiff claims “Heck-barred” citing *Heck v. Humprey* (*Heck* doctrine) irrelevant but alleged as a vehicle to deny § 1983 Claims. (App.B-10a-11a)

A DMV Suspension takes precedence over a Superior Court citation. Subsequent to a DMV Notice, DMV may then issue, within five days, a Suspension in conjunction with any of, “unfavorable medical”, “violated probation terms” or “law enforcement encounter on or around ...”.

May 15, 2017. Ditrih citation hearing. Even if Plaintiff had successfully appealed Citation “Correction” or otherwise, the DMV Suspension “effective April 11, 2017”, issued more than a month prior, takes precedence.

On that “effective date of April 11, 2017”, causing immediate irreversible harm and damages in loss of vehicle-intensive real estate livelihood, earnings capacity, liberty, mobility. Claimed in 19 Second Amended Complaint Paragraphs and 4-Prayers, the brokerage supporting evidence. (Dkt.1-2/30-41). **All of which Willful Suppression from Appendix B-2a.**

No relevance whatsoever to “State traffic court”, “a

forum”, “the invalidity of her conviction”, “paid the fine”, “*Heck* Doctrines” and so forth. (App.B-10a-11a)

That said, if the contention **only** the initial irrelevant Citation 21806(a)(1) or even “Notice of Correction” 21460(a), **there would be no reason whatsoever for Plaintiff to file Superior Court Action in the first instance. Much less Defendants removal to USDC, Appellant moving to Appeals Court, concluding with Unrepresented Petitioner Cert Writ.**

## **2. Far Reaching Consequences**

### **A. Financial Hardship. Loss Earnings, Reputation.**

Not all real estate agents are Realtors® who must join and comply with National Association of Realtors® “Code of Ethics”. Earnings occur only upon transfer and recordation of real property in a commission only profession that holds a family’s largest, most personal and emotional asset where Realtors® hard work, initiative and integrity play an important and major role.

On March 17, 2017. Plaintiff signed contract. Significant 74% commission level based upon past experience with same brokerage in Norcal.

On April 1, 2017. Ditrigh ‘traffic stop’.

On April 11, 2017. Suspension “effective” date. On public record for 3-year period. DMV archived perpetuity.

Also on April 11, 2017. Daruvala issued Misdemeanor. Causing criminal record. Loss of credibility to Plaintiff vehicle-intensive real estate livelihood as a self-employed Realtor®/Broker and earnings capacity in a profession where trust in character, driving skills implicit.

### **B. Professional Insurance Penalties.**

California Association of Realtors attorney advised due to insurance liability Plaintiff prohibited from working at a brokerage for that 3-year period Suspension on public record. E&O insurance prohibitive to independent broker.

On April 19, 2017. Plaintiff forced to disassociate with her brokerage. Without liability insurance, unable to conduct business for that 3-year period to April 2020. Driver's license suspended, car impounded, necessary for her vehicle-intensive real estate livelihood. (Dkt.1-2/71)

Fulfillment of that 3-year period coincided with California Governor COVID-19 Order.

**C. Unforeseen Lodging Expense.**

On April 11, 2017. With verbal knowledge of Plaintiff Suspension, Daruvala allowed her to leave his Sheriff office for reasons known only to him. His day's conduct captured CCTV, photos, witnessed by Sheriff two-male reception volunteers and Plaintiff unknown witnesses. Without a driver's license, her car impounded used for camping during relocation and a criminal Misdemeanor, she was forced to stay at a safe-haven hotel until return of her license.

Costing approx. \$11,000.00 in savings held for permanent housing. (SAC Prayer No. 7)

**D, Auto Club So. CA. (AAA) Penalties.**

Suspension caused \$1,000 auto policy assessment for each of three years on record and confiscation of her Good Driver Discount for each of those three years. (Dkt.1-2/112)

**E. Intent to Dispose, Pending Lien Sale.**

On April 12, 2017. Orange County Sheriff's Dept. issued Intent to dispose of Plaintiff vehicle within 30-days. CVC Div.11. (Dkt.1-2/66-67)

On April 22, 2017. S&K Impound, Notice of Pending Lien Sale for Vehicle Valued \$4,000 or less. Civil Code § 30721. Certified to the DMV. (Dkt.1-2/83)

On May 2, 2017. S&K invoice \$1319.31. (Dkt.1-2/85). Dunivins towing invoice \$135.00. (Dkt.1-2/87)

**F. Daruvala Criminal Misdemeanor.**

On May 4, 2017. Plaintiff consulted a DMV attorney who explained violation and its criminal implications. Next day signing his \$1,500.00 retainer fee. (Dkt.1-2/89)

**G. Arrest Warrant.**

On May 16, 2017. Due to Sheriff late filing Misdemeanor, Department issued arrest Warrant \$2,500. (Dkt.1-2/107)

**H. Orange County CA DA Rackauckas 'DNA Test'.**

On May 18, 2017. Misdemeanor Hearing Day.

Former DA had implemented a condition unique to Superior Court, Orange County, California. In exchange for dismissing low level criminals [Plaintiff] DNA test required paying DA's Collection fee of \$75.00. Test maintained in DA's personal database. His collection lab neither State qualified nor State approved. Now DA Spitzer.

At same time, DA's office also advised of Daruvala Police Report on file. [Criminal/Plaintiff] purchased copy at \$25.00 fee. Report below verbatim. (Dkt.1-2/91-92)

**I. California Department of Real Estate (DRE).**

On August 22, 2019. DRE required Plaintiff file DRE Form 238, "Indictment Conviction and Disciplinary Action Notification". Certifying full disclosure Suspension and criminal Misdemeanor. Detrimental to her real estate license, livelihood, earnings capacity and reputation.

On September 9, 2019. DRE issued letter, "Pursuant to B&P Code 10186.2" your written notification will remain on file.

On September 12, 2019. Plaintiff filed DRE Form 208 "Broker Renewal Application". Full disclosure, explanation and evidence Suspension and criminal Misdemeanor. Injurious against Plaintiff clean DRE license held since 1992.

**J. California Dept. Motor Vehicles (DMV).**

On December 16, 2019. License renewal. DMV required Suspension details, synonymous with DUI. Detrimental to her self-employed vehicle-intensive real estate livelihood based significantly upon safely showing properties.

**K. Governor of California Newsom COVID-19 Executive Order N-33-20.**

November, 2019. Unofficial but supermarket panic.

March 19, 2020. California Governor issued official stay at home Order to all but those in essential health care, emergency, food services. An almost three-year duration.

April 17, 2020. Plaintiff relieved of her three-year Suspension encumbrance but which coincided with N-33-20 resulting in loss of income from which independents have never fully recovered.

With Plaintiff driving record diminished, crucial to her real estate livelihood and earnings capacity, Suspension and the Misdemeanor criminal record, now at age-81 she has little chance of securing her future handed to her on March 17, 2017. All lost due to egregious conduct of two Deputies. Just 2-weeks into developmental stage of her new Orange County market that has since enjoyed sumptuous property price increases.

**3. Deputy Sergeant Jonathan T. Daruvala. Police Report Dated 4-11-17.**

**18 USC § 242; 18 USC § 1621; 28 USC § 1746; 42 USC § 1983; CA PC(1)(7)(5)**

“Plaintiff identified his paragraphs as A-G. Verbatim below. Her response follows the Report:

1. Copies to: *Dana Point. Cite & Release.*
2. CASE NO. 17-013950, **SH937786**.

Sheriff’s Department Orange County Santa Ana, California. Sandra Hutchens Sheriff-Coroner. Report Continuation.

**Paragraph A.** On April 11, 2017, I was assigned to the city of Dana Point in a marked black and white patrol car as a patrol sergeant. At approximately 1140 hours, first and last name (date of birth, license number), later identified by her California Driver’s License, came to city hall to complain about a traffic stop by Deputy Ditrih. I recognized her from a prior contact at Dana Point City Hall and knew she had already filed a complaint with Sergeant Grayson.

**Paragraph B.** Newey was complaining about several different things including the fact she was required to take a DMV re-exam as a result of the traffic stop. She also complained the DMV officer was looking for any reason to fail her. I asked her what it was I could do to help her. She stated she received a notice from the DMV stating her California Driver's License was suspended. I asked her several times what I could do to help her, but she would not ask a specific question and repeatedly asked, "Where do I stand?" She appeared to get frustrated and stated, "I'm going to another police department". She then walked out of city hall.

**Paragraph C.** A few minutes later, I was driving out of city hall when I saw Newey driving her gold '05 Honda Accord (license plate number) drive out of the parking lot onto Acapulco Drive. There were no other occupants in the vehicle. Due to her statement that she had a suspended driver's license, I initiated a car stop by turning on my forward facing steady red light and flashing emergency lights. Newey turned onto Nottingham Drive and came to a stop along the curb line.

**Paragraph D.** I spoke with Newey as she sat in the driver's seat. She again admitted her license was suspended and showed me the letter from the DMV. The DMV letter said at the top, "Order of Suspension" and was addressed to her. The letter also explained, "you are unable to operate a motor vehicle safely because of a lack of skill as shown by examination or other evidence. Your privilege to operate a motor vehicle is withdrawn effective April 11, 2017".

**Paragraph E.** I conducted a DMV records check which showed her license was suspended 04-11-17 for a "lack of knowledge or skill" (authority 13953). DMV records also showed she was served by certified mail (service code A).

**Paragraph F.**, I asked Newey to step out of her vehicle

and she complied. I advised her I was citing her for driving on a suspended license and impounding her car. She continued to complain that she had not been treated fairly. At her request, we removed several of her personal items from the vehicle for her to keep possession of.

**Paragraph G.** I impounded the vehicle for 30-days at S&K towing per CVC 14602.6(a). I cited and released Newey at the scene. She told me she was homeless and had been living out of her car. I offered to call her a taxi but she refused. I also offered her a ride to anyplace nearby. She refused and stated she was going to sleep right there on the corner.

INVESTIGATING OFFICERS. REPORT BY J.

DARUVALA #3615 (typed). Initialed JD.

DATE OF REPORT 4-11-17.

APPROVED BY Signature SGT. J. SCHNELL.3521.

**4. Plaintiff Response to Sergeant Jonathan T. Daruvala Police Report.**

**Preface:**

On April 3, 2017. Plaintiff visit (“prior contact”) to Dana Point Sheriff Office. Captured on Dana Point Sheriff Office CCTV Surveillance cameras. (“CCTV”)

On April 11, 2017. Complete day’s actions captured on CCTV. Plaintiff arrival to her rescue by unknown witnesses, still sat on curb outside Sheriff office where ordered. Stranded and vulnerable to Dana Point’s homeless population, *Housing ... Dana Point.*

CASE NO. 17-013950. SH937786, the Misdemeanor CVC 14601.1(a) and confiscation of license willfully suppressed. Merely stating: “I was citing her for driving on a suspended license and impounding her car.” (¶F). “I impounded the vehicle for 30-days ...” and “I cited and released Newey at the scene” (¶G). Evidence, Daruvala lack of honesty, integrity and character.

**Paragraph A.** Daruvala admits Plaintiff “at approximately 1140 hours ... came to city hall” but wrongly admits “to complain about a traffic stop by Deputy Ditrih”. He admits he “recognized her from a prior contact at Dana Point City Hall” and admits he “knew she had already filed a complaint with Sergeant Grayson”. Failing to disclose Plaintiff had requested a meeting with Lieut. Chilton, through the two-male reception volunteers, that he had denied by shaking his head to volunteers. Captured CCTV.

**Paragraph B.** Due to his conduct, Plaintiff had no option but to leave Sheriff Office, capturing photo, “So.Ops.Statement” timed 11.45am. Mere five minutes from arrival to departure in which he admits to, “her California Driver’s License was suspended”. Otherwise, series of unfounded allegations and direct quotes that together, if true, captured on CCTV and witnessed by the volunteers,

“Newey was complaining about several different things ..”, “She also complained”, “I asked her what it was I could do to help her.”. “I asked her several times what I could do to help her” “repeatedly asked, **”Where do I stand?”** “... appeared to get frustrated and stated, **”I’m going to another police department”**”, “then walked out of city hall”.

\*Direct quotes (bold), if true, would be held under oath on the witness stand. **28 U.S. Code § 1746**, CA PC (1)(7)(5).

**Paragraph C.** He admits he was driving out of “city hall” but at the same time admits “There were no other occupants in the vehicle”. (observed Plaintiff arriving “city hall” alone on CCTV). He admits “due to her statement that she had a suspended driver’s license”. With that knowledge, he immediately returned to his back office never a word spoken. Leaving Plaintiff helpless and with no other others on duty she had no option but to leave. Captured on CCTV. Once Plaintiff reached Sheriff’s parking lot threshold “he initiated a car stop”. To avoid inhibiting ingress and egress,

she was forced to turn onto “Acapulco Drive” where she “came to a stop” at “Nottingham Drive”. Captured CCTV.

**Paragraph D.** “I spoke with Newey as she sat in the driver’s seat”. His first words, “Where do you live, where are your family, friends?”. Investigatory prior to impounding vehicle, confiscating driver’s license and issuing criminal Misdemeanor. He alleges “she again admitted her license was suspended and showed me the letter from the DMV”. If true, captured on CCTV.

“City of Dana Point Meeting Minutes, April 16, 2013”. “MADD Presentation Deputy Jonathan Daruvala”.

“MADD … in recognition of his 64 DUI arrests in 2012. Lt. Koehmstedt reported, “in community for over 11 years, Daruvala has over 270 DUI arrests in his law enforcement career and certified by California Highway Patrol and State of California to teach DUI enforcement”.

By 2017, with his numerous DUI arrests and teaching credentials, Sergeant Daruvala would not need a visual of “Order of Suspension” to recite ‘form’ verbiage therein. Alleging “The DMV letter said …”. (Dkt.1-2/53)

**Paragraph E.** He admits he conducted a “records check”, appearing to add credibility to his previous paragraph.

**Paragraph F.** “I asked Newey to step out of her vehicle”. He ordered Plaintiff to leave her car and sit outside. Captured on CCTV. He admits “I was citing her for driving on a suspended license”. Failing to disclose he issued DMV form “Verbal Notice by Police Officer.” CVC 13953, “Confiscation Driver’s License”, and “Dana Point SH937786 criminal Misdemeanor CVC 14601.1(a.)”. Captured on CCTV. Continuing with his unfounded allegations, “she continued to complain that she had not been treated fairly”.

**Paragraph G.** He admits “I impounded the vehicle for 30-days at S&K Towing per 14602.6(a)”. Yet, he failed to provide documentation or details of S&K Towing and her car’s whereabouts she only discovered once driver provided

a card. Daruvala admits “I cited and released Newey at the scene”, while concealing license confiscation, issuing criminal Misdemeanor (typically a DUI) and leaving her on the curb. He admits “she was going to sleep right there on the corner” when that was her response to his initial three investigatory questions immediately upon ‘traffic stop’.

**Conclusion.** Daruvala had claimed sight of the “Suspension”, defended his egregious actions while pretending at end of Report he ‘suddenly’ became aware of Plaintiff housing conditions.

His “unsworn declaration” and that of his “approved” under **28 US Code § 1746, CAPC (1)(7)(5)**.

## **5. Relevant Procedural Background.**

### **Docket numbers USDC. Appeals Court where noted.**

On November 1, 2017, subsequent to administrative procedure, County of Orange issued a “WARNING”. “You have only six months to file a court action on this claim. GC § 945.6. (Dkt.1-2/130)

On April 23, 2018. Acting upon County “WARNING” Plaintiff Pro Se Litigant filed “Complaint” Superior Court of California, County of Orange. Defendants County of Orange, joined as parties, City of Dana Point, Victoria Ditrih, Jonathan Daruvala. All parties served that day, Plaintiff personally handing copy to Jackie Littler for Mark Denny, City Manager Dana Point. (Dkt.1-2)

On June 13, 2018. Plaintiff filed “First Amended Complaint”. (Dkt.1-5)

On June 22, 2018. Defendants removed claim to District Court. (Dkt.1)

On June 25, 2018. Case assigned US District Judge David O. Carter, US Magistrate Karen E. Scott.(Dkt.1-5)

On August 29, 2018. Plaintiff filed “Second Amended Complaint”. Defendants County of Orange, City of Dana Point, Victoria Ditrih, Jonathan Daruvala. (Dkt.26)

On October 22, 2018. Within less than 24-hours’

notice, Court issued “Scheduling Notice. Hearings taken off calendar, the Court will decide these motions **without a hearing**”. (Dkt.59)

On December 10, 2018, District Court issued “Report and Recommendation”. Not just erroneous but outlandishly so (Dkt.65). 2018 LEXIS 219533; (App.B-2a.)

On December 27, 2018, Plaintiff filed 64-page “Objections” to Appendix B. (Dkt.66)

On January 18, 2019, District Judge filed “Order and Judgment, ... and the remaining claims are **remanded** to the Orange County Superior Court of California”. (Dkt.70); 2019 LEXIS 9387. (App.C-20a)

On May 13, 2019. Superior Court Hearing. Plaintiff and Defendants’ attorney appeared. Court Ruling “And the Alleged Conduct is Protected by Qualified Immunity”. 2019 LEXIS 57041.

On June 6, 2023. Plaintiff filed “Motion for Leave to File Notice of Appeal and Extension of Time, and Points and Authorities Combined with Filed Notice of Appeal”. (Dkt.73)

On June 16, 2023, District Court filed “Report and Recommendation” (Dkt.77). (App.D-21a)

On June 29, 2023. Appeals Court issued ORDER. Circuit Judges Silverman, R. Nelson, and Bumatay. **DISMISSED** “lack of jurisdiction”. 2023 LEXIS 16541. (App.A-1a).

On June 30, 3023. Plaintiff filed “Objections to Report & Recommendation of U.S. Magistrate Judge” (Dkt.79)

On July 3, 2023. “Objections to Report and Recommendation of U.S. Magistrate Judge”. “Case dismissed”. Appeals Court (Dkt.8)

On July 11, 2023. District Court filed “Order Accepting Report and Recommendation of US Magistrate Judge”. (Dkt.82) (App.E-26a)

On July 21, 2023. Plaintiff filed “Motion for Reconsideration of Order Accepting Report and Recommendation of US Magistrate Judge”. (Dkt.83)

On July 21, 2023. Appeals Court issued **MANDATE**. (Dkt.9)

On July 24, 2023. “Motion to Reconsider Order Accepting Report and Recommendation of U.S. Magistrate Judge”. “Case dismissed and Mandate issued”. Appeals Court (Dkt.10)

On July 30, 2023. Appellant “Opening Brief”, “Major deficiency. Case is closed”. Appeals Court (Dkt.11)

## **6. The District Court Decisions**

### **A. U.S. Magistrate Judge Karen E. Scott. Ethical Breach. 28. USC § 455(a).**

Failed to self-recuse, recurring and similar to,

*Housing is a Human Right v. County of Orange*. 8:19-cv-00388-PA-JDE. Known as 8:19-cv-00388-DOC-KES. “Order to Reassign Case on Recusal of Magistrate Judge”. “by reason of: Defendant City of San Clemente is a former client”. Entered March 7, 2019. (Dkt.8).

That “Recusal” just three-months after “KES” issued Appendix B-2a. ‘Defendant City Dana Point’ is a former client; practicing as a lawyer and partner in the Business Litigation and Government Law Sections at Rutan & Tucker. (San Clemente and Dana Point contiguous).

Her failure to self-recuse presents an appearance of impropriety and a high probability of actual bias.’

### **B. U.S. Magistrate Judge, Obstruction of Justice. 18 USC § 242; 18 USC § 1001; 18 USC § 1503; 18 USC § 1621; 28 USC § 1746, 42 USC § 1983.**

Adjudication Plaintiff Second Amended Complaint (“SAC”) (Doc. 26). (App.B-2a).

Due to shock at Willful Suppression all claims

Plaintiff loss of livelihood she was unable to see ‘forest for the trees’. During COVID lockdown she came observe Court’s Decision, not just erroneous but outlandishly so, an Appeal would serve the interests of justice. (App.B-2a).

Filing, “Motion to File Notice of Appeal ....”. Entered June 6, 2023. (Doc. 73)

“Objections to Report and Recommendation ...”  
Entered on June 30, 2023, (Doc. 79), and

“Motion for Reconsideration of Order ...”. In which “A Manifest showing, of a failure to consider material facts presented to the Court before such decision”. Identifying 16-failures therein **all** presenting facts and supporting evidence. Entered on July 21, 2023. (Doc.83).

- Willful Suppression. 64 of 162 SAC Paragraphs. Those that would implicate Deputies and prove § 1983 claims.
- Willful Suppression. Plaintiff vehicle-intensive real estate livelihood as a Realtor®, the loss thereof and of earnings capacity, future earnings, reputation.

Claimed in 19-SAC paragraphs at, ¶ 9-11, 34-36, 51, 55, 64, 103, 107, 123-125, 140, 142, 147, 161-162; Prayer Nos. 3-6; Omission material facts, Prayer No. 7 “(SAC ¶ 89; Prayer No.7)” (App.B-6a). Supporting evidence brokerage contract, commission, card. (Dkt.1-2/30-41).

District court **merely** alleging in five-instances:

1. Plaintiff had been temporarily living in her car because she had just moved to Orange County”. (Dkt.1-2 at 92, 119)]. (App.B-6a);
2. “and need to drive to make a living”. “(SAC ¶ 100-06)” (App.B-10a);
3. i.e. being cited, losing her car, and paying a lawyer ...”. (App.B-14a);
4. “Plaintiff also fails to allege how the confiscation caused her any damages, since she was not permitted to drive while her license was suspended and ultimately

re-tested and re-obtained her license from the DMV.

**\*\*See Dkt.1-2 at 122).** "See" underlined to ensure credibility. (App.B-15a)

**\*\*Willful Suppression, next page, Dkt.1-2/123. ¶ 1.**  
**"How the confiscation caused her any damages".**

5. "her recent move to Orange County and her need to drive to work". (App.B-17a)

District Court also aware Superior Court "Complaint" claimed real estate livelihood in 16-paragraphs. Nos.5, 13-16, 19, 22-23, 27, 30, 38-40, 47, 71,75. (Dkt.1-2)

Aforementioned facts and evidence District Court would be fully aware Plaintiff vehicle-intensive real estate livelihood and losses thereof. **Nonetheless, Willful Suppression all claims.**

- Willful Suppression. DMV Mailing error. Envelope postmarked April 10, 2017, one-day prior to Suspension "effective date of April 11, 2017". (SAC ¶ 50; Dkt.1-2/51.) "(Daruvala later saw her driving in reverse. (SAC ¶¶ 50, 57, 67.)" (App.B.12a). No relevance to SAC ¶ 50.
- Willful Suppression. The reason Plaintiff visit to Dana Point Sheriff (SAC ¶ 51)
- Willful Suppression. Police conduct throughout April 3 and 11, 2017. Captured on Dana Point Sheriff Office CCTV Surveillance Cameras. (SAC ¶ 41, 63, 86)
- Willful Suppression. 3-investigatory questions Daruvala asked Plaintiff upon the 'stop'. (SAC ¶ 69)
- Willful Suppression. Unarmed, compliant Plaintiff sat on curb surrounded by 2-Dana Point cars, ordered by Daruvala, parked in opposite directions should she attempt movement in either direction. (Dkt.1-2/62).
- Willful Suppression. 2-witness photos of Plaintiff still sat on curb where ordered and where Daruvala had thrown her laptop and purses. (SAC ¶ 88:Dkt;1-2/63-64).

- Willful Suppression. Reason for Plaintiff hotel stay where taken by her witness. (SAC ¶ 89).
 

“Plaintiff had been temporarily living in her car because she had just moved to Orange County. (Dkt. 1-2 at 92, 119.)” (App.B.6a). Implying a ‘gold digging homeless’ to capture hotel expenses.

“Dkt.1-2 at 92”, is p2, Daruvala Police Report alleging “homeless”.

“119”, is p4, para.4. Plaintiff response to Daruvala Police Report citing “homeless”. Confirming dishonest Report where, in his last paragraph, he pretended he ‘suddenly’ knew of Plaintiff housing conditions.
- Willful Suppression, SAC ¶ 7-8,13,15-16, 20, 22-29,32-33,37,44-45,52,56,58-62,69,72,88, 90-91, 94,96-97, 99, 113-115,117,119-20,121-22,126,157-62. (Dkt.79,p4-5)
- *Heck* Doctrine inapplicable to Plaintiff action. Discussed in Factual Background.
- Pointing to SAC paragraphs and Exhibits (“at Dkt.”) to establish credibility. For example, Willful Suppression **“law enforcement encounter”** (Ditrih) cause in Plaintiff Suspension. (App.B. 4a-last line, 5a-ending with “(SAC ¶ 49; Dkt.1-2 at 53 [order of suspension].)”).
- “She apparently requested a hearing ... [email referring to hearing date]”. (App.B-5a). That email generated from Plaintiff to her brokerage manager. **Not** initiated from DMV or any government agency.
- Extracts taken out of context. For example, “In April 2018, pro se Plaintiff Evelyn Newey (“Plaintiff”) initiated this lawsuit in Orange County Superior Court”. (Dkt.1-2.) (App.B-2a). Implying Plaintiff suddenly “initiated this lawsuit” with “spurious” intent.
- Alleging a 5-word cut from the 54-word SAC ¶ 85. “Plaintiff is 75 years old. (SAC ¶ 85.)” (App.B-3a).

Focus on Plaintiff age rather than the contents that together with SAC ¶ 86, would incriminate Daruvala.

- “State Law Claims”. (SAC ¶ 126-162).

“In removal actions, district courts that have declined to exercise supplemental jurisdiction have remanded the state law claims to state court rather than dismissed those claims”. (App.B-18a).

Yet, alleged “state law claims” that placed most favorable light on Defendants. (App.B-4a,6a,7a,11a,17a). Willful Suppression “claims” beneficial to Plaintiff.

Specifically, Plaintiff harm in loss of real estate livelihood, earnings capacity, reputation. SAC ¶140,142,147,161,162. (Dkt.73. p20).

- “Exhibits” (Dkt.1-2/1-131).

“Nonetheless the Court will consider these exhibits in deciding the motions”. (App.B-4a, Footnote2.)

The “Court” considered exhibits that placed the most favorable light on Defendants. “(Dkt. 1-2 at \_\_\_\_ )”.

20-total. (App.B.2-4a,5a,6a,7a,12a,13a,14a,15a)

In contrast, the “Court” failed to “consider” Exhibits favorable to Plaintiff. (Dkt.1-2/30-41, 51, 56, 62, 63-64, 66, 85, 87, 89, 100-1, 112, 123; also at Dkt.73. p23-24).

**District Judge David O. Carter.**

**18 USC § 242; 18 USC § 1001; 18 USC § 1503; 18 USC § 1621; 28 USC § 1746, 42 USC § 1983.**

*Housing* case: Motion to Disqualify District Judge Carter.

“The City Movants wish to litigate the current dispute. They are entitled to do that before a judicial officer whose impartiality neither the parties nor the public have a reasonable basis to question. IV.  
Conclusion. For reasons set forth above, the Motion to recuse the District Judge is granted.”

“Dated: June 14, 2019. Signed James V. Selna US District Judge”. *Hous. is a Human Right v. Cty. of Orange.* USDC

CDCA No. SACV 19-388 DOC (JDEx) Rep. 2019 U.S. Dist.  
LEXIS 100361 \*; 2019 WL 2491544

On January 19, 2019, Judge Carter, five-months prior to that Motion, had issued Plaintiff Order and Judgment alleging, “The Court has reviewed the pleadings and all the records and files herein, along with Report and Recommendation of US Magistrate Judge”. (C-20a).

If true, he would have “reviewed” Plaintiff Second Amended Complaint. (Doc.26)

“Deputy Daruvala instructed Plaintiff to leave her car and to sit down outside to which she complied by sitting on the curb. (SAC ¶ 70)”, and,

“Plaintiff witness, previously unknown to her, had taken photographs of her distraught on the curb. [Doc#1-2,p63-64]. (Willful Suppression SAC ¶ 88; and photos)

A **“vulnerable easy target for criminals”** in transient-intensive City of Dana Point.

“Without a driver’s license, car and local support, Plaintiff witness came to her aid checking her into a safe Marriott where she remained from that relevant day of April 11, until July 8, 2017, then hotel closer to DMV re-test on July 142017. (SAC 89)”. (Court portrayed “89” as a ‘gold-digging’ “homeless”. Willful suppression ‘reason’ Plaintiff stay at Marriott. App.B-6a)

In addition to the SAC Judge Carter had “reviewed” Daruvala Police Report including final statement alleging, “homeless”. (Dkt.1-2/91-92) Confirmed in App.B-14a.

Judge Carter recused due to ex-parte eagerness to remove “homeless” from Orange County, its beach cities, in particular uber-affluent Laguna Beach Judge Carter’s long-time residence. But when Deputies Ditrih. Daruvala, City Dana Point sheriff office that abuts Judge Carter’s home, Defendants in a lawsuit where Plaintiff is left “distraught on the curb” and “homeless” that changes the narrative! *Eastman* case: Judge Carter Opinion.

“Based on the evidence the court finds it more likely than not that President Trump corruptly attempted

to obstruct the Joint Session of Congress on January 6, 2021.” *Eastman v. Thompson*. “Order re Privilege of Documents Dated January 4-7, 2021”. No. 8:22-cv-00099-DOC-DFM. 2022 LEXIS 59283.

“Core Terms”: “corruptly” missing.

Judge Carter then issued *Eastman v. Thompson*. “Order re Privilege of Remaining Document”. 2022 LEXIS 192784.

Judge Carter “reviewed … all records” who, by appearance, complicit with Report & Recommendation, “attempted to obstruct” justice in Plaintiff case. (App.B-2a)

### **Conclusion**

It would take several more pages, beyond the realm of words, Fedex “saddle stitch” and time, to enumerate every finite discrepancy, decision and conclusion in App.B-2a, and D-21a. District Court had, by appearance, adjudicated Plaintiff claim with bias, lack of impartiality and fairness and where the Court was influenced accordingly. To undermine her action, denigrate her honesty and character and portray her in a disrespectful, demeaning and humiliating manner. The Court in deference to Guide of Judicial Policy. Ch.2. Code of Conduct for US Judges.

### **7. Appellate Court Decisions.**

City defendants Dana Point and their attorneys appeared on district court docket, *Newey v. Cty. of Orange*, USDC CDCA 8:18-cv-01118-DOC-KES 2019 LEXIS 9387.

Appeals court appeared to unilaterally invoke Fed.R.Civ.P.21 defendant City Dana Point removal. Absent “court order on motion of any party” or “of the court's own initiative”. *Newey v. Cnty. of Orange* US Court Appeals 9<sup>th</sup> Circuit No.23-55499, 2023 LEXIS 16541.

Neither the courts nor defendants informed Plaintiff/Appellant of City's removal, that she only discovered upon receipt of Docket sent by Appeals court, and by 2023 LEXIS 16541.

## REASONS FOR GRANTING THE PETITION

Petitioner proves credibility before the Court because she is a pro-se litigant who can present an important case of why it matters through first-hand experience presented in her own words.

Petitioner's case matters because it is an important vehicle for litigants who repeatedly face the issues of lower court's decisions in the civil justice system.

i. Cert should be granted because the district court not only acted in deference to Statutory federal law: **18 USC § 242, 18 USC § 1001, USC § 1503, USC § 455(a), USC § 1621, USC § 1746 USC § 1983**, but also in deference to Guide of Judicial Policy, Ch.2. Code of Conduct for United States Judges, complicit with Police egregious actions.

**Canon 2A.** "A judge must avoid all impropriety and appearance of impropriety". In particular, adjudication Plaintiff Second Amended Complaint ("SAC") (Dkt.26) not just erroneous but outlandishly so; the subsequent "Motion for Leave to File Notice of Appeal and Extension of Time, and Points and Authorities Combined with Filed Notice of Appeal" (Dkt.73); "Objections to Report & Recommendation of U.S. Magistrate Judge" (Dkt.79); and "Motion for Consideration of Order Accepting Report & Recommendation of U.S. Magistrate Judge" (Dkt.83).

**Canon 3.** A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently.

A Adjudicative Responsibilities.

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law,

"The court will decide these motions without a hearing". Entered on October 22, 2018. (Dkt. 59).

**Denying Plaintiff "right to be heard". Raising the Report and Recommendation behind closed doors. (App.B-2a)**

C. Disqualification. In deference to 28 USC 455(a).

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which (a) the judge has a personal bias or prejudice concerning a party,

US Magistrate Judge failed to self-recuse and which is similar and recurring. A defendant, City of Dana Point, a client at her law firm.

ii. Cert should be granted as to Petitioner's compelling reasons for the delay in jurisdiction and why it matters.

After much deliberation throughout the delay period, Petitioner finally determined the issue. By appearance, not what was said but what wasn't said in the District court's Report and Recommendation that was not just erroneous but outlandishly so. (App.B-2a)

Combined with the emotional anxiety caused by Deputies' conduct verbally and in writing, the loss of Petitioner's vehicle-intensive real estate livelihood, earnings capacity, reputation, and the shock and bewilderment at the District court's bias and lack of impartiality she set aside Report and Recommendation. **Not one word therein** of that loss, Petitioner had claimed in 19-SAC paragraphs, 4-Prayers and the Supporting Evidence, her Independent Contractor Agreement, Commission Schedule and business card.

On May 13, 2019. Upon remand, Superior Court Hearing. Petitioner and Defendants present during which, His Honor quietly announced, "if true, their conduct (deputies) was egregious" (on court record). Defendants left the Court. Petitioner responded "it's all on camera, I did nothing wrong on the road". But judge held ruling "And the alleged conduct is protected by qualified immunity". 2019 LEXIS 57041.

On June 12, 2019. Due to PCV-13 pneumonia vax, tinnitus occurred that evening non-stop to-date. Then in

November, 2019, worldwide informal pandemic. By March, 2020, California Governor Newsom issued stay at home COVID-19 Executive Order N-33-20 that lasted almost three-years and severest nationwide. Followed in April, 2020, by unforeseen accident when a driverless van plowed into Petitioner's parked car while sat therein. Coinciding with Plaintiff fulfilment 3-year Suspension period.

During that period without benefit of an attorney or third-party input and with limited resources, research and computer access unavailable due to libraries shutdown, Petitioner set about unwinding that Report and Recommendation (App.B-2a.)

The district court's broad-brush response to Petitioner's delay, claimed in her "Motion for Leave to File Notice of Appeal and Extension of Time ...." (Dkt.73)

".. and a series of unfortunate events in her personal life." Pointing without clarity to "(Dkt.73 at 3.)"; (App.D-24a)

It would be impossible for a pro-se litigant to successfully compare and contrast in short time the 17-page Report and Recommendation not just erroneous but outlandishly so. Alleged by US Magistrate Judge Scott with a Stanford law degree, a lawyer and partner admitted to the California State Bar, at a law firm whose clients are defendants City of Dana Point. Her partnership on Plaintiff case with District Judge Carter and his 36-year Municipal and District Court bench.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



---

Evelyn Newey, Petitioner Pro Se (Unrepresented)

Date: September 22, 2023.