10/19/23

NO. 23-448

IN THE SUPREME COURT OF
THE UNITED STATES

DR. APARNA VASHISHT-ROTA, an individual,

Petitioner,

v.

HOWELL MANAGEMENT SERVICES,

Respondents.

PETITION FOR WRIT OF CERTIORARI: Rule 20.2
OR Rule 12

June 9th, 2023 Order[1]

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

1 Ca. Civ. Proc. Code § 904.1 (a): An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following: (11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).(13) From an order granting or denying a special motion to strike under Section 425.16.

QUESTIONS PRESENTED FOR REVIEW

1. Whether an exception to the final judgment rule is valid under U.R.A.P. 5 as the June 9th, 2023 and June 13th, 2023 arose from an improperly dismissed interlocutory appeal which the Court of Appeals dismissed voluntarily?
    a. If the Court of Appeals lost jurisdiction in September 2022, the month Rota sent the email to dismiss her appeal after a rule 37A motion for suggestion of mootness; then at the time of the voluntary dismissal, could the Court of Appeals have entered the November 1, 2022 Order two months beyond such a dismissal?
    b. The November 1, 2022 Order mentioned in the June 9th, 2023 Order arose from the interlocutory appeal and as the appeal was not properly dismissed as per URAP Rule 37, then the Court of Appeals still has jurisdiction under URAP Rule 5.
2. Whether paragraph 5b in the June 9th Order is estoppped in part as HMS lost those points on appeal on January 19th, 2023 (See *Separate*

Costs Order On Appeal June 13th, 2023 Order).

3. As per §925 California Labor Code applies to the dispute, California law governs the dispute as of July 23, 2019, does that make all Orders in Utah void retroactively?
4. Whether under California Code §904.1, an appeal from sanctions order directing a payment over $5,000, is a final appealable Order and an appeal by right as per Cal. Civ. Proc. Code §904.1 (A);
5. Whether under URAP 5, the November 1, 2022 items mentioned at 5 b in the June 9th, 2023 Order arose from the interlocutory appeal which was not properly dismissed as per URAP Rule 37, which means that the Court of Appeals still has jurisdiction under URAP Rule 5.
6. Whether the case should use dépeçage or compel Utah to use California law because §925B allows a unilateral void of Utah as the choice of law.

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TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Petitioner Aparna Vashisht-Rota respectfully requests the issuance of a writ of certiorari to review the judgment of the Utah Courts.

DECISION BELOW

The decision from Utah Supreme Court issued on October 10, 2023.

JURISDICTION

The Utah Supreme Court entered judgment on October 10, 2023. This Court's jurisdiction is invoked under 28 U.S.C. §1257) as per California Civ. Proc. Code §904.1 (A)(11); (A)(12); and §904.1 (A)(13).

STATE RULES INVOLVED

URAP RULE 37

Rule 37. Suggestion of mootness; voluntary dismissal. Effective: 11/1/2022

(a) Suggestion of mootness. Any party aware of circumstances that render moot one or more of the issues presented for review must promptly file a "suggestion of mootness" in the form of a motion under Rule 23.

(b) Voluntary dismissal. At any time prior to the issuance of a decision an appellant may move to voluntarily dismiss an appeal or other proceeding. If all parties to an appeal or other proceeding agree that dismissal is appropriate and stipulate to a motion for voluntary dismissal, the appeal will be promptly dismissed. The stipulation must specify the terms as to payment of costs and fees, if any.

(c) Affidavit or declaration. If the appellant has the right to effective assistance of counsel, a motion to voluntarily dismiss the appeal for reasons other than mootness must be accompanied by appellant's personal affidavit or declaration demonstrating that the appellant's decision to dismiss the appeal is voluntary and is made with knowledge of the right to an appeal and the consequences of voluntary dismissal. If counsel for the appellant is unable to obtain the required affidavit or declaration from the appellant, the motion must be accompanied by counsel's affidavit or declaration stating that, after reasonable efforts, counsel is unable to obtain the required affidavit or declaration and certifying that counsel has a reasonable factual basis to believe that the appellant no longer wishes to pursue the appeal.

U.R.C.P. Rule 37. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence.

Effective: 5/1/2021

(a) Statement of discovery issues.

(1) A party or the person from whom discovery is sought may request that the judge enter an order regarding any discovery issue, including:

(A) failure to disclose under Rule 26;

(B) extraordinary discovery under Rule 26;

(C) a subpoena under Rule 45;

(D) protection from discovery; or

(E) compelling discovery from a party who fails to make full and complete discovery. (2) Statement of discovery issues length and content. The statement of discovery issues must be no more than 4 pages, not including permitted attachments, and must include in the following order:

(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in person or by telephone in an effort to resolve the dispute without court action;

(C) a statement regarding proportionality under Rule 26(b)(2); and

(D) if the statement requests extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.

California Labor Code §925 B. LABOR CODE Section 925

925. (a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:

(1) Require the employee to adjudicate outside of California a claim arising in California.

(2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

(b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.

(c) In addition to injunctive relief and any other remedies available, a court may award an employee who is

enforcing his or her rights under this section reasonable attorney's fees.

(d) For purposes of this section, adjudication includes litigation and arbitration.

(e) This section shall not apply to a contract with an employee who is in fact individually represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

(f) This section shall apply to a contract entered into, modified, or extended on or after January 1, 2017.

(Added by Stats. 2016, Ch. 632, Sec. 1. (SB 1241) Effective January 1, 2017.)

Section 904.1 - Appeal to court of appeal

(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), or a judgment of contempt that is made final and conclusive by Section 1222.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay the action on the ground of inconvenient forum, or from a written order of dismissal under Section 581d following an order granting a motion to dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(13) From an order granting or denying a special motion to strike under Section 425.16.

(14) From a final order or judgment in a bifurcated proceeding regarding child custody or visitation rights.

(b) Sanction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

Ca. Civ. Proc. Code §904.1

CITATION TO OPINION OF THE COURT OF APPEALS/TRIAL COURT

"An order is final only if it disposes of the case as to all parties and "finally disposes of the subject, matter of the litigation on the merits of the case." *Bradbury v. Valencia*, 2000 UT 50, 9, 5 P.3d 649 (citation omitted). August 1, 2023.

"Three days later, Rota filed a document captioned "Appellant's Motion for Suggestion of Mootness Pursuant to Rule 37(A)" page 3, **November 1, 2022 Order.**

"With respect to Rota's LLC, we can see no basis for concluding that it has claims independent of Rota's, and because of this, we dismiss its interlocutory appeal too. Although its counsel, who is Rota's counsel, declined the opportunity to voluntarily withdraw the LLC's appeal, he acknowledged the unity of interest between Rota and the LLC." **November 1, 2022 Order.**

"5. A small sampling of these filings, as set forth in the November 2022 Order, are as follows:

a) A letter and a 296-page document titled "Brief for the October 18, 2022 Meeting to Show Cause." According to the Court of Appeals, only 19 pages are somewhat substantive. The Defendant filed three actions in California and one in Utah: (1) Rota v. Howell Management Servs., et al., No. 2:18-cv02010-L-AGS, in San Diego Superior Court in and for the State of

California; (2) Rota v. Howell Management Services, LLC, No. 19-cv-0512-L-MDD, in United States District Court for the Southern District of California; (3) Rota v. Howell Management Servs. et al., No. 3:20-cv-00321-TWR-KSC; and (4) Vashisht-Rota v. Howell Mgmt. Servs., No. 200100119 in Cache County, State of Utah. All have been dismissed.

b) A document captioned "Motion to Clarify September 13, 2022 Order," which contains a 4-page motion and around 100 pages of attachments. Most of the attachments were not related to the case. HMS filed a motion to clarify the April 29, 2022 Order but they didn't rule on this motion to clarify.

c) A "Motion to Change Venue," which was 392 pages long and accused Judge Fonnesbeck of "extreme prejudice and hatred towards minorities." Appellant had filed this in 20010119

d) A 2-page letter with 31 pages of attachments, followed by 94 pages of supplemental exhibits. One of these exhibits accuses the Utah judiciary of racism, misogyny, and other biases. (This is normal articles in the press about Utah's bias against minorities and that women are 50th in Utah).

e) A document titled "Appellant's Motion [for] Proposed Orders." This motion is 291 pages long and was not

requested by the court. It was followed by a 212-page filing, and another 223-page filing. See November 2022 Order at 2-5." **June 9th, 2023 Order page 3 and 4.**

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is a case in which HMS' mom is a county tax assessor in the small town of Cache County. After his solicitation of a coworker on March 14, 2017, he refused to pay and ran to Utah, and then sued Rota on November 2, 2017.

The trial Court ruled that the Utah agreements govern but on July 23, 2019, Appellant voided Utah using §925B and asked the case to use California law. The trial Court defaulted her on September 2, 2020 stating that Appellants violated a so-called protective Order of information Appellant already had prior to the litigation and of which she is the producing party. She does not agree with HMS" confidential stamps and tried to meet and confer with them through the appeals process. The trial Court and the Court of Appeals delayed the record from July 2021 to December 2021.

Finally, upon getting the record, on November 1, 2022, without ruling on the merits of the appeal, tossed it out due to nonrecord items. Those nonrecord items were then used in the June 9th, 2023 Order without a determination of which law governs in light of *Depuy Synthes Sales, Inc. v.*

*Howmedica Osteonics Corp., No. 21-*55126, 2022 U.S. App. LEXIS 6463 (9th Cir. Mar. 14, 2022);

Appellant has voided Utah with counsel and she can do that at any time prior to the final Order. She also invoked that in the April 2023 petition for rehearing in 22-758 so the parties are aware that she has exercised the statute again.

SUMMARY OF ARGUMENTS

1) California Law Applies to June 9th Order:

Appellant, Dr. Aparna Vashisht-Rota, a pro se litigant appeals from an order issued on **June 9th, 2023** for vexatious litigant from the interlocutory appeal that was not properly dismissed so the Court of Appeals still has jurisdiction. The Court of Appeals had the September 2, 2020 Default Order on appeal because Rota/AEG was defaulted due to discovery sanctions.

The main issue of the case is which law should apply to the dispute. As per See generally *Ewing v. St. Louis-Clayton Orthopedic Grp., Inc.*, 790 F.2d 682, 686–87 (8th Cir. 1986); Dépeçage, Black's Law Dictionary (11th ed. 2019). As per §925B, California law applies to the dispute retroactively as of July 23, 2019. Appellant wants

the Court to use California law and as per California law, the June 9th, and 13th, 2023 (separate appeal) are final and appealable as entered without jurisdiction and above $5,000 in sanction.

The Court noted that it is not a final appealable Order but Rota meets the exception as the Order is from an interlocutory appeal that is not dismissed properly. Had the court dismissed the appeal voluntarily as it claims, it could not have entered the November 1, 2022 Order. The trial Court used parts of the November 1, 2022 Order in the June 9th, 2023 Order as that was not dismissed properly, the court of appeals still has jurisdiction over the appeal.

2) **Rota wins on the merits of the SODI Motion:**

Had the Court let her file a response to the vexatious litigant motion, Rota has grounds to contest the stamps at issue. Any party can do that at a later stage and Rota did not waive her right to do so. She is a named party and as the Court of appeals allowed HMS to add nonrecord items, Appellant had to send the appeal back to trial Court to file an SODI first or tell HMS that HMS was supposed to file an SODI first and it did not.

3) **Court of Appeals Did Not Restrict Appellant:**

The trial Court is further erroneous because the Court of Appeals did not label her vexatious for filing those documents on November 1, 2022 See 22-758).

It deemed them irrelevant, however, as it did not rule on the merits, and Rule 83 requires that a pro se litigant be labeled only if she can't succeed, Rule 83 restriction in this case is premature, purely to delay, harass, and frustrate the process for Rota who can contest the stamps. She can also add her own stamps. HMS had to file an SODI first and did not. Thus, Rota has a high chance of success. Rota also won her non-record items motion and costs motion on appeal pro se, so the trial Court adding a restriction with her win is prejudicial.

4) **California Law Governs the Dispute as of July 23, 2019:** Rota with counsel appeared on that date and voided Utah.

5) HMS Did Not Follow Rule 37:

Rule 37 governing notes the requirement to meet and confer prior to filing the SODI. HMS failed to do that. Defendants are also the producing party of two of the documents as a founder. Defendants had most of the information prior to the dispute. As per ¶9 and

¶11 of the stipulated Protective Order, Defendants can refuse to add stamps to the information she produced and as per ¶11 Defendants can contest HMS' stamps. She has not raised these issues earlier.

> 9. If, through inadvertence, a producing Party provides any information pursuant to this litigation without marking the information as CONFIDENTIAL or ATTORNEYS' EYES ONLY information, the producing Party may subsequently inform the receiving Party of the CONFIDENTIAL or ATTORNEYS' EYES ONLY nature of the disclosed information, and the receiving Party shall use reasonable efforts to treat the disclosed information as CONFIDENTIAL or ATTORNEYS' EYES ONLY information upon receipt of written notice from the producing Party, to the extent the receiving Party has not already disclosed this information. Protective Order [D.E. 73], at 1-4, 6.
>
> 11. Acceptance by a Party of any information, document, or thing designated as- CONFIDENTIAL or ATTORNEYS' EYES ONLY shall not constitute a concession that the information, document or this is confidential. *Either Party may later contest a claim of confidentiality and does not waive such right to argue at a later date that the designation of such document is not warranted.* In the event a Party believes any document designated as

> CONFIDENTIAL or ATTORNEYS' EYES ONLY does not warrant the designation assigned to it by the producing party under the terms of this Protective Order or that disclosure of information designated ATTORNEYS' EYES ONLY must be disclosed to other than a qualified recipient of such information in order to provide advice with respect to this action, the Party may, through the filing of a Statement of Discovery Issues pursuant to Utah Rule of Civil Procedure 37, seek an order of the court removing or modifying the designation assigned by the producing party. *Id.* at 11.

HMS is making this minor issue unduly burdensome as the documents were produced in a confidential AAA trial and all the confidential information was redacted. The issued Order notes there was no harm to HMS so HMS is in bad faith in violation of ¶6 of the Protective Order.

> 6. The parties agree to designate information as CONFIDENTIAL or ATTORNEYS' EYES ONLY on a good faith basis and not for purposes of harassing the receiving Party or for purposes of unnecessarily restricting the receiving Party's access to information. Documents that do not contain confidential information as provided for above should not be designated CONFIDENTIAL or ATTORNEYS' EYES ONLY....

COURSE OF PROCEEDINGS AND DISPOSITIONS IN OTHER COURTS

170100325

1. On November 2, 2017, HMS sued Appellant in Utah alleging certain causes of action.

2. On July 2018, Hon. Judge Allen declared Utah as the controlling agreements.

3. On July 23, 2019, Appellants voided Utah in person due to the SODI Order to appear before July 31, 2019.

4. On August 12, 2019, Appellants won her AAA trial against Hernandez.

5. On October 21, 2019, HMS filed a motion to oppose Defendants from damages calculations having never completed discovery at all. HMS refused to provide relevant discovery with or without counsel [R.3389].

6. In early 2020, the trial Court coerced Appellant to attend a mediation to accept less money than owed by contract and statute. Appellant refused.

7. The trial Court defaulted Appellant on September 2, 2020 without a hearing and on the wrong motion filed by HMS despite HMS' express note that the parties should follow the stipulated Protective Order.

8. From July 2021 to December 2021, Court of Appeals and trial court delayed the trial court

record to advance 20010119 and then used that in 170100325 even though facts changed on August 31, 2020 and Rota filed misappropriation of trade secrets under Utah law on April 18, 2020. The trial Court dismissed all claims from Rota due to HMS' refusal to follow the Protective Order and issue an SODI first.

9. On April 29, 2022, Rota won the non-record items at appeal.

10. HMS moved to 'clarify' and it was able to add non-record items back for both parties on June 7, 2022.

11. The Court of Appeals refused to do the same for Rota as noted in 5b of the June 9th, 2023 Order.

12. Rota thought the appeal is voluntarily dismissed as per URAP 37 due to pending issues at trial Court for the Order on appeal.

13. Rota won her costs motion on appeal on January 19, 2023.

14. Rota went through the appeals process at the Supreme Court to learn that rarely does the Supreme Court pick trial Court issues. No review is possible.

15. On June 8th, 2023, the remittitur issued.

16. On June 9th, 2023, the trial Court restricted her even though she has meritorious arguments for the confidential stamps and she is the producing party of 2 of the documents at issue. The documents are from a CA AAA trial.

ARGUMENT

A. June 9th, 2023 Order final as per California law and Utah law as the Court of Appeals did not properly dismiss the interlocutory appeal.

Pursuant to Appellant notes that she satisfies the elements required for an exception noted in the Court's opinion See *Loffredo v. Holt*, 2001 UT 97, 10, 15, 37 P.3d 1070. 15 We next consider whether Holt's appeal qualifies for an exception to the final judgment rule. Three possible exceptions exist. See *Bradbury,* 2000 UT at 12. First, non- final judgments merit our review if the three requirements of rule 54(b) of the Utah Rules of Civil Procedure have been satisfied. *Pate v. Marathon Steel* Co., 692 P.2d 765, 767 (Utah 1984). Second, we have jurisdiction over interlocutory orders when a party obtains our permission under rule 5 of the Utah Rules of Appellate Procedure. Utah R. App. P. 5; *Bradbury*, 2000 UT at 12. Finally, we can entertain a non-final judgment if an appeal is permitted by statute. Bradbury, 2000 UT at 12.

1) The Court of Appeals Did Not Have Jurisdiction to Enter November 1, 2022 Order that was filed based on U.R.A.P. 5. Appellant voluntarily dismissed the appeal as the Court of Appeals allowed nonrecord items. As she also had some nonrecord items, she sought to enter those at the trial Court.

a) URCP Dismissal Without Prejudice: A party who voluntarily dismisses its complaint without prejudice generally has no right to appeal. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 680, 78 S. Ct. 983, 985, 2 L. Ed. 2d 1077 (1958); *Bowers v. St. Louis S.W. Ry.*, 668 F.2d 369 (8th Cir. 1981), cert.

denied, 456 U.S. 946, 102 S. Ct. 2013, 72 L. Ed. 2d 469 (1982); *Yoffe v. Keller Indus., Inc.,* 580 F.2d 126, 129 (5th Cir.1978), cert. denied, 440 U.S. 915, 99 S. Ct. 1231, 59 L. Ed. 2d 464 (1979).[5] The rationale behind this rule is that a voluntary dismissal without prejudice "render[s] the proceedings a nullity and leave[s] the parties as if the action had never been brought." In re *Piper Aircraft Distribution Sys. Antitrust Litig.,* 551 F.2d 213, 219 (8th Cir.1977). Indeed, a plaintiff who moves for voluntary dismissal receives just that which is sought "the dismissal of his action and the right to bring a later suit on the same cause of action, without adjudication of the merits." *LeCompte v. Mr. Chip, Inc.,* 528 F.2d 601, 603 (5th Cir.1976). However, an exception to the general rule has been recognized when (1) the plaintiff is legally prejudiced by certain conditions placed by the court on the voluntary dismissal, and (2) the plaintiff evidences no acquiescence in those conditions. *Bowers,* 668 F.2d at 369-70; *Yoffe,* 580 F.2d at 130; LeCompte, 528 F.2d at 603-04. When both of these conditions are met, the plaintiff may appeal a voluntary dismissal.

Appellant's complaint can succeed
under a lot of circumstances such as:

1. Requiring HMS to file an SODI for the September 2, 2020 Default Order:

HMS refused to meet and confer on 19 May, 2019 and July 16, 2023. It is refusing to pay the money it owes by contract. It is refusing to move to California when Rota has noted under oath she does not have the agreements, Utah keeps on forcing her to steal her

money and business due. No other court would make a white male lose business.

2. Exercise of §925 B:

"On July 23, 2019, in the Utah matter, under oath, I declared there are no Utah agreements. Case 3:20-cv-00321-TWR- KSC Document 114-3 Filed 11/02/20 PageID.6806 Page 114 of 202. "All right, so I understand your position is that things should be rolled back to the August agreement (August 3, 2016 Second Agreement), but let me address the third agreement frankly given the status of the case." "We therefore conclude that, for purposes of the demurrer, the alleged oral modifications to Sewell's position, job responsibilities, and compensation structure, occurring after January 1, 2017, were sufficient to bring Sewell's employment agreement under section 925.6 That Sewell's employment agreement contains a provision that requires all modifications be in writing does not make Civil Code section 1698, subdivision (b), inapplicable.

This is clear from comparing Civil Code section 1698, subdivision (b), to subdivision (c) and to the Law Revision Commission comments on Civil Code section 1698. Civil Code section 1698, subdivision (c), reads in relevant part: "Unless the contract otherwise provides, a contract in writing may be modified by an oral agreement supported by new consideration." The Law Revision Commission comments on Civil Code section 1698 provide in part: "The introductory clause of subdivision (c) recognizes that the parties may prevent enforcement of executory oral modifications by providing in the written contract that it may only be modified in writing.... Such a provision would not apply to an oral modification valid under subdivision (b)." (Cal. Law Revision Com. com., 9 West's Ann. Civ.

Code (2011 ed.) foll. § 1698, p. 458, italics added.) The Law Revision Commission comments thus clarify that where, as here, a written agreement prohibits oral modifications, an oral modification nevertheless is enforceable to the extent it has been executed by the parties. *LGCY Power LLC v. Superior Court*, Cal. Ct. App. Case No. F08235." Utah is void as of July 23, 2019. All Utah Orders are void as a result. Thank you for the practice and the time.

3. **Ruling on the merits of 17100325 motions**
4. **Rulings on the merits in 20010119** (the order is ABOUT the motions, not what is contained in it). Appellant noted bias and, in this case, 2017, as has she exercised §925 B retroactively to July 23, 2019, 20010119 Orders are void.
5. **Motion for a New Trial:** Appellant has moved for a new trial for her California employment that Utah tried to steal for 8 years. Based on the above, the Utah trial and appellate court is wrong that her complaint can't succeed. She does not meet the requirements of Rule 83 and it was already a stretch to use that in 20010119. Hon. Judge Fonnesbeck recused herself so Appellant was correct to call her hostile. Appellant has won the Show Cause motion for which the November 1, 2022 Order issued because that was issued without judication upon a voluntary dismissal as the Court notes in its Order. Therefore, the November 1, 2022 Order and Remittitur are void.

For the September 2, 2020 order, she can contest the confidential stamps and is the producing party so the Court did not follow the Protective Order and did not pull up HMS for not doing so to steal money due and to hurt her AAA win. Her AAA award was confirmed on May 26th, 2023 so she won. She won the costs motion and the nonrecord items at the appeals Court, she is owed money as per contract and statute.

There is a fact changed motion that HMS filed on August 31, 2020 so it knows that there is no case as that is a whole change in legal positions. As per §925 B, she can't be forced to litigate her California LLC and claims in Utah where she knows no one. It is HMS that has filed frivolous motions but it has friends in high places that don't rule on the merits to rob a pro se litigant that has voided Utah for her personal claims so she must be dismissed from Utah as Utah lacks jurisdiction over her. The case should be in diversity jurisdiction. Appellant would also like to know what leeway the Court gave her as a pro se litigant. It gave her none. 0.

D) **Lack of Jurisdiction:**

a) Utah Void as of July 23, 2019:
Defendants have voided Utah and as a classified employee, moves to apply §925B retroactively rendering all orders in 20010119 and 170100325 moot. The Court may consider using Rule 2 to invite briefings on the issue.

Case 3:20-cv-00321-TWR- KSC Document 114-3 Filed 11/02/20 PageID.6806 Page 114 of 202. "All right, so I understand your position is that things should be rolled back

to the August agreement (August 3, 2016 Second Agreement), but let me address the third agreement frankly given the status of the case."

"We therefore conclude that, for purposes of the demurrer, the alleged oral modifications to Sewell's position, job responsibilities, and compensation structure, occurring after January 1, 2017, were sufficient to bring Sewell's employment agreement under section 925.6 That Sewell's employment agreement contains a provision that requires all modifications be in writing does not make Civil Code section 1698, subdivision (b), inapplicable. This is clear from comparing Civil Code section 1698, subdivision (b), to subdivision (c) and to the Law Revision Commission comments on Civil Code section 1698.

Civil Code section 1698, subdivision (c), reads in relevant part: "Unless the contract otherwise provides, a contract in writing may be modified by an oral agreement supported by new consideration." The Law Revision Commission comments on Civil Code section 1698 provide in part: "The introductory clause of subdivision (c) recognizes that the parties may prevent enforcement of executory oral modifications by providing in the written contract that it may only be modified in writing.... Such a provision would not apply to an oral modification valid under subdivision (b)." (Cal. Law Revision Com. com., 9 West's Ann. Civ. Code (2011 ed.) foll. § 1698, p. 458, italics added.) The Law Revision Commission comments thus clarify that where, as here, a written agreement prohibits oral modifications, an oral modification nevertheless is enforceable to the extent it has been executed by the parties. Due to unilateral exercise of §925B, the Utah trial Court must use dépeçage—i.e.,

the conflict of laws doctrine applying the law of different states to resolve different issues in the same case. See generally *Ewing v. St. Louis-Clayton Orthopedic Grp., Inc.*, 790 F.2d 682, 686–87 (8th Cir. 1986); Dépeçage, Black's Law Dictionary (11th ed. 2019). Moreover, the case is split into California employment and Utah which is the common employment experience contemplated by the agreements. Under California law, the Utah contract is also an employment contract which Appellant has voided with counsel on July 23, 2019.

"We set forth the pertinent rules of statutory construction that inform our interpretation of section 925 and relevant sections of the Code of Civil Procedure. When interpreting statutory language, " '[w]e begin with the fundamental rule that our primary task is to determine the lawmakers' intent.' " [Citation.] The process of interpreting the statute to ascertain that intent may involve up to three steps. [Citations.] ... We have explained this three-step sequence as follows: 'we first look to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction.' " (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082 (*MacIsaac*).)

"In the first step of the interpretive process we look to the words of the statute themselves. [Citations.] The Legislature's chosen language is the most reliable indicator of its intent because ' "it is the language of the statute itself that has successfully braved the legislative gauntlet." '

[Citation.] We give the words of the statute 'a plain and commonsense meaning' unless the statute specifically defines the words to give them a special meaning." (*MacIsaac, supra,* 134 Cal.App.4th at pp. 1082—1083.) " 'It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed.' " (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998 (*Security Pacific*).)

Furthermore, we are not empowered to insert language into a statute, as "[d]oing so would violate the cardinal rule of statutory construction that courts must not add provisions to statutes." (*Security Pacific, supra,* 51 Cal.3d at p. 998.; see also Code Civ. Proc., § 1858 ["[i]n the construction of a statute ..., the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted ...."].) "If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial construction. [Citations.] In such a case, there is nothing for the court to interpret or construe." (*MacIsaac, supra,* 134 Cal.App.4th at p. 1083.) *LGCY Power, LLC v. Superior Court*, 75 Cal. App. 5th 844 (2022); *Depuy Synthes Sales, Inc. v. Howmedica Osteonics Corp.*, No. 21-55126, 2022 U.S. App. LEXIS 6463 (9th Cir. Mar. 14, 2022).

As of August 31, 2020, the facts changed in the case. Utah did not have jurisdiction and had it reverted to California, Appellant would have a

full trial on her harassment/wages, and contractual claims.

Appellant's counsel at D.E. 224 also noted that the claims belong in arbitration and California since early 2019.

b) URAP 37A, B, and C:

i) URAP 37A: There was a suggestion of mootness filed.

ii) URAP 37B: "At any time prior to the issuance of a decision an appellant may move to voluntarily dismiss an appeal or other proceeding. If all parties to an appeal or other proceeding agree that dismissal is appropriate and stipulate to a motion for voluntary dismissal, the appeal will be promptly dismissed."

There was no motion to stipulate and the Court seems to have dismissed the appeal voluntarily.

iii) URAP 37C: There was no affidavit and Rota was represented by counsel. There was no ruling on the Suggestion of Mootness as per Rule 37 A.

As a result, the Court lost jurisdiction and all the Orders issued therefrom are collateral Orders that are void due to lack of jurisdiction. Dépeçage must apply to the case as there are two states' laws. Appellant has already voided Utah as of July 23, 2019 with counsel and the parties have agreed orally to revert to California.

c) Appellant an employee:

When the wages' claims were pending in California, *Dynamex* issued. HMS noted she's an employee in facts changed motion on August 31, 2020. As noted above, Defendants tried to add their wages Order in Utah to note her classification as an employee in Utah.

Response to Request for Admission No. 6:

Defendants object to Request No. 6 because it is compound, overbroad, seeks information not yet fully developed at this stage of litigation, calls for legal conclusions, assumes potentially incorrect facts, and inappropriately seeks information regarding legal and factual issues not relevant or material to this litigation. Without waiving the foregoing objections, deny.

SUPPLEMENTAL RESPONSE: Without waiving any objections, deny. Notwithstanding any objections, Defendants state that Defendant

Rota has been classified as an employee in California. (See, Case 3:18-cv-02010-L- AGS Document 21 Filed 01/28/19 PageID.473, lines 23-27) "From October 2015 to March 2017, Plaintiff was employed by Defendants Howell Management Services, LLC and Chris Howell ("HMS" or "Defendants"). See ECF No. 1-2.

"Thus, under well-established jurisprudential principles, our interpretation of that language in Dynamex applies retroactively to all cases not yet final that were governed by wage orders containing that definition. (See *Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 978 (Newman) ["The general rule that judicial

decisions are given retroactive effect is basic in our legal tradition"]; *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 24 (Waller) ["[T]he general rule [is] that judicial decisions are to be applied retroactively"].) As the *United States Supreme Court observed in Rivers v. Roadway Express, Inc.* (1994) 511 U.S. 298, 312– 313: "A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." In *McClung v. Employment Development Dept.* 19 (2004) 34 Cal.4th 467, 474, this court, after quoting the foregoing passage from *Rivers v. Roadway Express, Inc.,* observed: "This is why a judicial decision [interpreting a legislative measure] generally applies retroactively." (See *Woolsey v. State of California* (1992) 3 Cal.4th 758, 794 (Woolsey) [" 'Whenever a decision undertakes to vindicate the original meaning of an enactment, putting into effect the policy intended from its inception, retroactive application is essential to accomplish that aim' "].) *VAZQUEZ v. JAN-PRO FRANCHISING INTERNATIONAL, INC.,* 2021."

d) Circuit Split in her Favor: On July 23, 2019, Appellant exercised §925B for California as per *Depuy Synthes Sales, Inc. v. Howmedica Osteonics Corp.,* No. 21-55126, 2022 U.S. App. LEXIS 6463 (9th Cir. Mar. 14, 2022); *LGCY Power, LLC v. Superior Court,* 75 Cal. App. 5th 844 (2022) and void Utah in the alleged Third employment Agreement. This is a diversity case. Appellant has modified her employment as of July 23, 2019 in person in Utah. Opposing counsel, an agent for

HMS, agreed that he understood that Appellant wants to revert to California.

"Although the Court recognizes that the allegations here pertain to conduct during the contractual relationship and the allegations in the Utah litigation pertain to post-contractual relationship conduct, both claims stem from a common experience contemplated under the Agreement—Plaintiff's contracted employment. Case 3:19-cv-00512-L-AGS Document 18 Filed 03/02/20 PageID.422 Page 8 of 10"

The Court needs to transfer the matter to California. Appellant voided Utah on July 23, 2019. It is applicable retroactively.

From Howmedica brief denied cert at the Supreme Court, page 10 "Nearly every circuit has resolved whether federal or state law governs the validity of forum selection clauses in diversity cases. Eight circuits consider the validity of forum-selection clauses a question of federal procedure. They thus apply federal law and routinely enforce forum-selection clauses, notwithstanding state laws that would otherwise void such clauses. Two circuits—including the Ninth Circuit below—consider the validity of forum-selection clauses a question of substantive state contract law. They thus apply state law and thus refuse to enforce forum-selection clauses if state laws void such clauses. That split was outcome-determinative below. Only this Court can resolve this intractable split and prevent geographical happenstance from determining the validity of forum-selection clauses in federal court.

"Under the federal Bremen factors, the courts ask whether honoring the forum- selection clause would "clearly" be "unreasonable and unjust," whether "trial in the contractual forum will be so gravely difficult and inconvenient that [the contracting party] will for all practical purposes be deprived of his day in court," whether the clause is a product of "fraud or overreaching," or whether enforcement would "contravene a strong public policy of the forum in which suit is brought." *Bremen*, 407 U.S. at 15, 18. Courts within these circuits thus routinely uphold forum selection clauses, including when faced with state laws like California's that declare forum- selection clauses void. In stark contrast, the Ninth Circuit below joined the Seventh Circuit and held that the validity of forum selection clauses is a matter of state substantive law. Thus, in those circuits, state laws that void forum- selection clauses control."

California controls the dispute. The agreements fall within the purview of §925 and nothing in Utah has been ruled on the merits. HMS' matter should be asked to use California law. As Appellant can't file at the trial Court, she has filed §925B in the petition for rehearing for 22-758. At Appellant's request, Utah has to use California law as of July 23, 2019 when Appellant modified the employment terms. Or HMS' case should be dismissed as lacking jurisdiction.

e) Pretrial Discovery Payment Orders: *San Diego Unified Port Dist. v. Douglas E. Barnhart, Inc.* (2005) 95 Cal.App.4th 1400, 1402 (pretrial order requiring codefendants to share in cost of destructive testing even though only some

defendants wished to pursue it).) makes an interim Order final in a case.

The trial court on September 2, 2020 default, issued a pre-trial discovery order under U.R.C.P. Rule 37 payment when an SODI needed to be filed first. The trial Court required her to pay without giving her the opportunity to raise all her defenses and despite repeating the same thing over and over in the 21-page document, Hon. Judge Fonnesbeck failed to notice that HMS needed to file and SODI first as the alleged producing party. Rota can contest the CONFIDENTIAL stamps of the documents so the grant is premature.

E. Rule 83 Inapplicable

Rule 83 states in pertinent part:

Before entering an order under subparagraph (b), the Court must find by clear and convincing evidence that: (A) The party subject to the order is a vexatious litigant; and

(B) There is no reasonable probability that the vexatious litigant will prevail on the claim.

As Rota already won against ¶5 b in the June 9th, 2023 Order (Appendix One) on appeal. If Appellant already won against the main points used to restrict Appellant, then clearly Rule 83 does not apply.

The Trial Court did not let her file her response adding extra steps and non-final Orders to prejudice and frustrate a trial for Rota. Rota as a party, per the Protective Order's express terms noted in the September 2, 2020 Order can contest

the CONFIDENTIAL stamps. She is the producing party of 2 of the 3 documents. HMS had to meet and confer and file an SODI first but it refused to follow the Orders' express terms that the parties file an SODI first.

The September 2, 2020 Orders states that the parties can resubmit any matter not resolved by the Order (page 21 of September 2, 2020 Order (Case 22-758, Appendix One, Page 178[2]).

a) HMS Didn't File an SODI for the September 2, 2020 Default Order and any party can contest the stamps at a later stage:

Motion to set aside default/Submit SODI as per U.R.C.P. Rule 37

a) Defendant APARNA VASHISHT ROTA, an individual, pursuant to U.R.C.P. Rule 7 (b) and (q) and Rule 37, respectfully move the Court to submit a request to remove confidential designation of the three documents on page 7 of the MEMORANDUM DECISION on Amended Motion for Issuance of an Order to Show Cause Re: Contempt of Protective Order issued on September 2, 2020 (22-758 see footnote 1)and note that she is the producing party of 2 of the 3 documents and does not want the stamps on them.

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2 https://www.supremecourt.gov/DocketPDF/22/22-758/254638/20230214153101339_20230214-152053-95758821-00007310.pdf

Defendant move to remove the CONFIDENTIAL notation for the documents at issue via this Statement of Discovery Issues pursuant to Rule 37. Either party can move to remove the CONFIDENTIAL designation as per the Protective Order. Defendant has attempted to meet and confer with opposing counsel on the issue on May 19, 2019 and July 16, 2023 in which the Plaintiffs refused to meet on any issue. The matters sought are proportional under Rule 26 (b)(2). The Statement of Discovery Issues does not require any extraordinary discovery.

Rule 37 governing notes the requirement to meet and confer prior to filing the SODI. HMS failed to do that. Defendants are also the producing party of two of the documents as a founder. Defendants had most of the information prior to the dispute. As per ¶9 and ¶11 of the stipulated Protective Order, Defendants can refuse to add stamps to the information she produced and as per ¶11 Defendants can contest HMS' stamps. She has not raised these issues earlier.

Moreover, HMS' business model is on the internet. It is public information.

> 10. The restrictions set forth in this Protective Order will not apply to information which is known to the receiving Party or which one of the receiving Parties already has in its possession, or which becomes known to the public after the date of its transmission to the receiving Party, provided that such

> information does not become publicly known by any act or omission of the receiving Party, its employees, or agents which would be in violation of this order. If such public information is designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, the receiving Party must inform the producing Party of the pertinent circumstances before the restrictions of this Order will be inapplicable.

Defendants had the information prior to the litigation. Defendants are the producing party of ¶10 a and ¶10 b.
Producing Party: Defendants are the producing Party of the information and as per ¶9 of the Protective Order, for ¶10 a and b.

b) Defendant is the Origin of HMS' Hernandez Relationship: AEG000917-918 shows that Hernandez did not know HMS. AEG000941-942: Hernandez did not know CPT, and AEG000938: HMS model is not confidential. It is public information. Defendant knew the CPT model prior to meeting HMS and Hernandez.

c) Defendant's job to prepare standard agreements for HMS: Defendant produced her agreement. Defendant produced Artesia Software. Substantial portions of the unredacted Hernandez contract and the Defendant contract are the same/similar. HMS gave Defendant the standard HMS agreement for Artesia Software on March 14, 2017. The agreement has the same information as the unredacted portions of ¶10 b and c. HMS gave Hernandez the standard

addendum and HMS gave Hernandez the standard contract to circulate with the same information. "Michael, take a look at the addendum and let me know if you have any questions. I made a few minor changes but now the format is consistent with other addenda we have done. If you want to sign it and sent back to me that would be great. Also, I am attaching a standard agent agreement for you to circulate to your contacts."

d) Defendants have attempted to Meet and Confer with Plaintiff.

1. Meet and Confer: Pursuant to U.R.C.P. Rule 37 (A)(2), Defendants attempted to meet and confer with Plaintiffs on May 19, 2019. "After today's hearing, I have a few questions. It appears that the Judge ruled that the April 24th, 2017 is the controlling document (at least that's what you argued this morning). HMS's pleadings are not definitive on the issue of whether that agreement has been terminated. I understand that there is an email that Chris sent to "Ravi Lothumalla" at US Admissions that mentions "prohibition" but not necessarily termination. Was the agreement terminated as of the "Ravi" email (dated July 10, 2017)? Or is it HMS's position that it was terminated at some other time? It appears to me that the agreement remains in force because it has not been terminated. In that case, per section 1.5 of the agreement, it is up for renewal after 2 years. [R.3063] Is HMS interested in renewing the agreement under this section?" **May 22, 2019:**

Jeff Shields "For a number of reasons, HMS obviously has no desire to entertain or negotiate, nor does Ms. Rota have any quarter to request, renewals, addenda, or new agreements." **July 16, 2023:** HMS won't meet and confer.

2. Plaintiff's Failure to Follow Protective Order Provision to Issue Statement of Discovery Issues Protective Order: "*11. the Party may, through the filing of a Statement of Discovery Issues pursuant to Utah Rule of Civil Procedure 37, seek an order of the court removing or modifying the designation assigned by the producing party.*

e) STATEMENT REGARDING PROPORTIONALITY: Pursuant to Rule 26 (b)(2), Plaintiffs sought to add CONFIDENTIAL notation without following ¶11 of the Protective Order that stipulates that the parties follow Rule 37 of U.R.C.P. to modify designations assigned to the documents. Rota is the producing party of 2 of the 3 documents.

For the foregoing reasons, Defendants move to remove the CONFIDENTIAL stamps on the three documents noted in the on page 7 of the **MEMORANDUM DECISION on Amended Motion for Issuance of an Order to Show Cause Re: Contempt of Protective Order** issued on September 2, 2020 at ¶10 a-c as provided for in ¶11 of the Protective Order rendering the Order MOOT.

Defendants tried to submit this motion to set aside the default and submit the SODI.

Defendants reiterate that she asked Utah Courts to use California law. She does not have a functioning trial Court.

F. Contractual Dues:

a) Pursuant to 42 USC §1981, Appellant faced discrimination in her trial. Mr. Rudy Giuliani received Rule 37 sanctions after many warnings. Appellant has received no remedial sanction in any of the cases before the Court 22-276, 22-949 or 22-758. In 22-758, which is the first filed case, Appellant is owed money by contract greater than the unilateral $10 million the Utah trial Court awarded HMS. The table for the contractual damages is on page 45.

Grades of Courts:

Attribute	Federal	AAA	Superior Court	SCOTUS	Ninth	Tenth	Utah Trial Court
Filing	Yes	Yes	Yes	Yes	Yes	No	No
Staff courteous	Yes	Yes	Yes	Yes	Yes	No	No
Easy to deal with	Yes	Yes	Yes	Yes	Yes	No	No
Adversarial?	Yes	Yes	Yes	Yes	Yes	Hostile	Hostile
Made mistakes in filings?	Yes	No	Yes	Yes	Yes	Yes	Yes

Pro se bias	No	No	No	No	Slight	Yes	Yes
Efficient	Yes	Yes	Yes	Yes	Yes	No	No
Grade	A+	A+	A+	A+	A+	F	F

Utah Litigation Value		Source
Intro to Hernandez 1.3.2 (d)/8 d First/Second	**$2,000,000**	Expert Reports in the case
Agents 1.3.3 and 9 First/Second Agreements	**$2,000,000**	Expert reports and agents delivered students to *HMS $50 million lifetime value*
Third Agreement	2,000 students thus far.	HMS disclosed 416 students eligible in 2019 out of 830. Estimated 2K till 2023. Lifetime value for 30 years, 8,000 students. *$14 million LTV*
1.3.3 c	$1,250	Amount due as per contract for life
1.3.3 d	$500	Amount due as per contract for life
	$2,500,000	2,000 * $1,250 (due now)
	$1,000,000	2,000 * $500 (due now)
Wages		
$3 million/year at 250 students/year @$12,000	**$24,000,000**	For 8 years
Harassment	**$500,000**	As filed in 3-20-0512 due to immediate loss of $500K.
Attorney's fees and costs	**$2,000,000**	Approximate
Competition		
1,000 students/year (HUST)	**$96M for 8 years** *360,000,000 LTV*	1,000 students/year for 30 years (30,000 students times $12,000)
3,000 students/year (OU)	**$288M for 8 years** *1,080,000,000 LTV*	3,000 students/year for 30 years (90,000 students times $12,000)
HUST + OU	*$2,880,000,000*	HUST and OU CPT trade value;
	$2,914,848,000 LTV	
Treble Actual Damages	**Due Now: $1,248,000,000** *$8,744,544,000 LTV*	8 years actual damage X 3 plus costs and attorney's fees of $2M to be added.

G. STANDARDS OF REVIEW

1. Clearly Erroneous:

Standard of Review: "We review whether the district court applied the correct legal standard for correctness." *Rodriguez v. Kroger Co.*, 2018 UT 25, ¶ 11, 422 P.3d 815. *A district court's interpretation of a rule of civil procedure presents a question of law that is reviewed for correctness." Aequitas Enters., LLC v. Interstate Inv. Group, LLC, 2011 UT 82, ¶ 7, 267 P.3d 923. "We interpret court rules, like statutes and administrative rules, according to their plain language." Burns v. Boyden, 2006 UT 14, ¶ 19, 133 P.3d 370.Courts are, in short, bound by the text of the rule .State v. Lucero, 2014 UT 15, ¶ 32, 328 P.3d 841, abrogated on other grounds by State v. Thornton, 2017 UT 9.*

2. Reasonableness/Substantial Evidence

Standard of Review: "Constitutional issues, including questions regarding due process, are questions of law that [appellate courts] review for correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, *overruled on other grounds by State v. Nielsen*, 2014 UT 10, 326 P.3d 645.

Standard of Review: "'When reviewing a district court's decision to find a party in contempt, we review the district court's findings of fact for clear error and its legal determinations for correctness.'..." *Cook Martin Poulson PC v. Smith*, 2020 UT App 57, 464 P.3d 541. "We review the imposition of contempt or discovery sanctions for

abuse of discretion." *Id.* (citing *Kilpatrick v. Bullough Abatement, Inc.*, 2008 UT 82, ¶ 23, 199 P.3d 957).

3. Arbitrary and Capricious

(1) Whether the trial court properly denied a motion for a new trial. *See Smith v. Fairfax Realty, Inc.*, 2003 UT 41, ¶ 25, 82 P.3d 1064; *State v. Pena*, 869 P.2d 932, 938 (Utah 1994) ("At the extreme end of the discretion spectrum would be a decision by the trial court to grant or deny a new trial based on insufficiency of the evidence."); *Wasatch Cnty. v. Okelberry*, 2010 UT App 13, ¶ 9, 226 P.3d 737; *Markham v. Bradley*, 2007 UT App 379, ¶ 14, 173 P.3d 865.

(6) Whether the trial court should award costs. *See Giusti v. Sterling Wentworth Corp.*, 2009 UT 2, ¶¶ 20, 78, 201 P.3d 966 (stating appellate courts review a trial court's denial of costs for abuse of discretion); *Dale K. Barker Co., PC v. Bushnell*, 2009 UT App 385, ¶ 8, 222 P.3d 1188 (same).

4. Abuse of Discretion

The abuse-of-discretion standard flows from the trial court's significant role in pre-appellate litigation. The trial court has "'a great deal of latitude in determining the most fair and efficient manner to conduct court business.'" Bodell Constr. Co. v. Robbins, 2009 UT 52, ¶ 35, 215 P.3d 933 (quoting Morton v. Cont'l Baking Co., 938 P.2d 271, 275 (Utah 1997)); accord State v. Rhinehart, 2006 UT App 517, ¶ 9, 153 P.3d 830. This is

because the trial judge "'is in the best position to evaluate the status of his [or her] cases, as well as the attitudes, motives, and credibility of the parties.'" Bodell, 2009 UT 52, ¶ 35 (alteration in original) (quoting Morton, 938 P.2d at 275); accord Rhinehart, 2006 UT App 517, ¶ 25.

Standard of Review: A challenge to a trial court's legal conclusion that evidence proves a claim are reviewed "for correctness, 'according the trial court no particular deference.'" *Lundahl Farms LLC v. Nielsen*, 2021 UT App 146 (cleaned up; citations omitted). "A trial court's findings of fact [...] will not be set aside unless they are clearly erroneous." *Cache County v. Beus*, 2005 UT App 204, 128 P.3d 63 (citation omitted).

Standard of Review: "Whether a gag order violates the right to free speech presents a question of law, which we review for correctness." *State Ex Rel. LM.*, 2001 UT App 314, ¶ 13, 37 P.3d 1188 (citation omitted). This court reviews for correctness the interpretation of an unambiguous order. *In re Estate of Leone*, 860 P.2d 973, 975 (Utah Ct. App. 1993).

5. Speak Out Act Standard of Review: SEC. 2. FINDINGS.

Congress finds the following:
(1) Sexual harassment and assault remain pervasive in the workplace and throughout civic society, affecting millions of Americans.
(2) Eighty-one percent of women and 43 percent of men have experienced some form of sexual harassment or assault throughout their lifetime.

(3) One in 3 women has faced sexual harassment in the workplace during her career, and an estimated 87 to 94 percent of those who experience sexual harassment never file a formal complaint.
(4) Sexual harassment in the workplace forces many women to leave their occupation or industry, or pass up opportunities for advancement.

1. Rule 83 Erroneous Legal Standard:

First, it must find by clear and convincing evidence that "the party subject to the order is a vexatious litigant." See id. R. 83(c)(1)(A). Second, the court must find, again by clear and convincing evidence, that "there is no reasonable probability that the vexatious litigant will prevail on the claim"—that is, the litigant's claim pending before the court. See id. R. 83(c)(1)(B).
In other words, the court cannot impose a vexatious litigant order on a pro se litigant whose claim before that court enjoys a reasonable probability of success. Rule 83(a)(1)(C) permits a court to declare a pro se litigant vexatious if the litigant, acting without legal representation, files improper pleadings or papers three or more times "[i]n any action": In any action, the person three or more times does any one or any combination of the following: (i) files unmeritorious pleadings or other papers, (ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter, (iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or (iv) engages

in tactics that are frivolous or solely for the purpose of harassment or delay. Rule 83(a)(1)(C) requires that, "[i]n any action, the person three or more times does any one or any combination of" certain specified acts. Utah R. Civ. P. 83(a)(1)(C). Although the acts are plural— "three or more times"—the action is singular. See id. Thus, just as we concluded that any means any, we likewise conclude that action means action—not actions.

2. Trial Court Unreasonable and Hostile: No Filed Motions and No paperwork Pro se:

First, the trial Court is erroneous to apply *Strand v. Nupetco*, 2017 because the paperwork she is attempting to file is not pro se. Second, the trial Court's Order issued on September 2, 2020 expressly allows parties to resubmit any matter". Appellant is a named party to the dispute. Third, there is nothing filed by Appellant to the best of her knowledge in 17100325 case and Appellant moved to recuse Hon. Judge Fonnesbeck and that has occurred. Fourth, there is an oral modification of the contracts pursuant to California Lab. Code §925 (B) and a deposition under oath so HMS understands that there is no jurisdiction and yet it filed motions that it should not have. These are also bad faith because in each instance, HMS acted to add more costs knowing full well that there is no jurisdiction.

1. HMS' Statement of Discovery Issues Regarding Requests for Extraordinary Discovery [D.E. 289] filed September 3, 2019;

2. HMS' Motion to Preclude Defendants from Offering Untimely Evidence and Calculation of Damages [D.E. 347] filed on October 21, 2019; and

3. HMS' Motion for Summary Judgment re: Defendants' Counterclaim and Supporting Memorandum [D.E. 348] filed on October 21, 2019;
4. HMS' Motion to Preclude Defendants from Using Rebuttal Experts at Trial or at any Hearing [D.E. 373] filed December 4, 2019; and
5. Defendants' Statement of Discovery Issues Regarding Rebuttal Expert Discovery and Request for Telephone Conference [D.E. 377] filed December 5, 2019.
6. HMS'MotionforContemptofMarch21,2019OrderandSupporting Memorandum filed on December 9, 2019
7. HMS' Motion For Case Management/ADR Motion filed on January 2, 2020.
8. HMS' Motion to Preclude Defendants from Using Untimely Evidence of Arguments of Damages at any Hearing or at Trial (Ninth and Tenth Supplemental Disclosures filed on January 6th, 2020.
9. HMS' Motion for Contempt of Stipulated Protective Order, March21, 2019 Gag Order, Docket Privacy Order and Mediation Order filed on July 2, 2020.
10. HMS' Motion to Motion to Strike Untimely Supplemental Responses to Written Discovery, to Bar Withdrawal or Amendment Responses to Requests for

Admissions, and for Sanctions filed on August 31, 2020.

Thus, Rule 83 applies to HMS in 17100325.

***3. Arbitrary and Capricious No Response from Appellant*:** As far as Appellant knows, there are no responses filed in Utah in 170100325. She has not filed anything on her own and seeks to use September 2, 2020 to resubmit her counsel's work, not pro se, but still the trial Court offered a restriction.

4. Abuse of discretion: Denying a leave to amend when Utah is void and there are claims due in other jurisdiction is an abuse of discretion. To usurp costs motion HMS did not win at the appeals level is an abuse of discretion. The trial Court is not letting her have a forum at all for 8 years. That is an abuse of discretion. No white male would lose 8 years of their life for reporting harassment, Utah abused its discretion to harm Appellant for HMS' express benefit and she is not from Utah. The trial court refused to properly consider her motion for a new trial or to file evidence for the Show Cause solely to oppress and harass when it can easily allow her to file attorney paperwork for years.

Rule 83 authorizes a court to impose restrictive orders on vexatious pro se litigants. The purpose of such orders is to curb the litigant's vexatious conduct. To that end, the order may, for example, require the litigant to obtain legal counsel before proceeding in the pending action or to obtain leave of court before filing pleadings,

motions, or other papers. See Utah R. Civ. P. 83(b), (d). But before imposing such an order, the court must make two findings.

First, it must find by clear and convincing evidence that "the party subject to the order is a vexatious litigant." See id. R. 83(c)(1)(A).

Second, the court must find, again by clear and convincing evidence, that "there is no reasonable probability that the vexatious litigant will prevail on the claim"—that is, the litigant's claim pending before the court. See id. R. 83(c)(1)(B). In other words, the court cannot impose a vexatious litigant order on a pro se litigant whose claim before that court enjoys a reasonable probability of success.

1. Appellant has not filed anything in 17100325.She won two motions at the Court of Appeals: Nonrecord and costs. She won the AAA Trial against Hernandez again confirmed. It is Utah Courts that are overly tedious, burdensome, and harassing to delay to usurp claims and money due by delay and then claim they can't succeed.
2. Appellant has voided Utah as of July 23, 2019. As per§925(B), she can't be forced to litigate her claims in Utah. Utah has to adopt that statute because that void 20010119. Appellant is pro se so it is expected she does not know all the relevant arguments. Thus, she can prevail on her claims if Utah finally dismisses

or voids Utah law. Appellant has paperwork that is already filed by counsel in the case that she is resubmitting using the September 2, 2020 order as per §925 B. As substantial claims of wages, harassment and others are pending, Appellant hopes that Utah stops trying to force her to litigate in Utah. She is not a Utah resident and none of the work was from Utah. She does not want a connection to Utah and will never forgive the loss of dignity against a person who only owes money and was able to use nonpayment harassment to get poor words written against her to steal more. Yet, the Utah court did not act on her Theft of Services claims and restricted her so HMS could steal more.

3. As well, California law applies to the dispute as of July23, 2019, thus, Rule 83 is inapplicable and moot. Finally, the Court should have allowed Rule 83 (e)(1) to allow her to file.
4. It is HMS' case that does not meet 12(B)(6).

In addition, by the framework, it is HMS that is vexatious. HMS has refused to:

1. Stop filing in 17100325 when there is no jurisdiction
2. Withdraw its Show Cause Motion attacking Appellant's AAA trial again confirmed on May 26th, 2023.
3. Pay the money owed by contract and statute;
4. Refused to accept her §925(B) exercise;
5. Refused to accep the rescission;

And HMS solely filed motions that are frivolous, baseless, and without any legal basis in 17100325. It is HMS that is vexatious and has refused. As well, because appellant's complaint in 20010119 can be corrected via a mandamus to void Utah as of July 23, 2019, the past Order is erroneous.

CONCLUSION

For the foregoing reasons, Defendants move the Supreme Court to vacate the Utah Orders as void as of July 23, 2019 §925B. Note that Appellant had already done so and the parties orally modified the agreements.

The trial court and HMS in conspiracy with each other to rob an out of state party held hostage,

has refused to rule on the merits and confer all privileges afforded to a white male.

DATED: October 10, 2023

/s/ Aparna Vashisht-Rota
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